

# CHAPMAN AND CUTLER

a partnership including professional corporations

9-363A009

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RECORDATION NO

FILED 1425

DEC 29 1989 -10 40 AM

December 29, 1989

DEC 29 1989 -10 40 AM

100 Peachtree Street, N.W.  
Atlanta, Georgia 30303  
(404) 420-1420

INTERSTATE COMMERCE COMMISSION

INTERSTATE COMMERCE COMMISSION

Honorable Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

50 South Main Street  
Salt Lake City, Utah 84144  
(801) 533-0066

\$30.00 filing fee

- Re: (1) Security Agreement and Trust Indenture - New #  
(2) Security Agreement and Trust Indenture - A  
Supplement No. 1

Dear Ms. McGee:

On behalf of ITEL Rail Corporation, the above instruments, in four (4) counterparts each, are hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the \$30 recordation fee.

Please record the Security Agreement and Trust Indenture (the "Security Agreement and Trust Indenture") dated as of December 14, 1989, not previously recorded, under a new recordation number.

The parties to the Security Agreement and Trust Indenture are as follows:

ITEL Rail Corporation (Debtor)  
55 Francisco Street  
San Francisco, California 94133

Continental Bank, National Association,  
as Indenture Trustee, (Indenture Trustee)  
231 South LaSalle Street, 7th Floor  
Chicago, Illinois 60697

The Security Agreement and Trust Indenture provides for a grant by the Debtor to the Indenture Trustee of a security interest in the railroad rolling stock described in any Indenture Supplement thereto, and for an assignment by the Debtor to the Indenture Trustee of the rights of the Debtor (i) under the Unblended Leases described in any Indenture Supplement thereto and each Additional Unblended Lease and (ii) to any Blended Lease Payment Rights under any Blended Lease described in any Indenture Supplement thereto and any Additional Unblended Lease Payment Rights under any Additional Blended Lease, in each case relating to the railroad rolling stock described in any Indenture Supplement thereto.

*Handwritten signature: C. D. [unclear]*

CHAPMAN AND CUTLER

Honorable Noreta R. McGee  
December 29, 1989  
Page 2

The Security Agreement and Trust Indenture Supplement No. 1 ("Indenture Supplement No. 1") dated December 29, 1989 should be recorded as ~~A~~ of the same recordation number as the Security Agreement and Trust Indenture.

The parties to the Indenture Supplement No. 1 are the same as in the Security Agreement and Trust Indenture.

The Indenture Supplement No. 1 lists and describes the railroad rolling stock and the Unblended Leases and the Blended Leases subject to the lien and security interest of the Security Agreement and Trust Indenture.

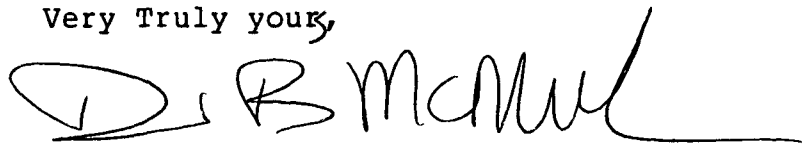
The railroad rolling stock and the Unblended Leases and the Blended Leases covered by the documents, as listed above, are identified in the schedules to the Indenture Supplement No. 1, a copy of which schedules are attached to this letter.

A short summary of the documents to appear in the ICC Index is as follows:

"Cover <sup>9</sup> 31 Railcars and the Debtor's right in and to certain leases and/or certain payments with respect to certain leases relating to such railcars.

Once the filings have been made, please return to the undersigned the stamped counterparts of the Security Agreement and Trust Indenture and the Indenture Supplement No. 1 not required for filing purposes, together with the ICC fee receipt and the letter from the ICC acknowledging the filings.

Very Truly yours,

  
\_\_\_\_\_  
DAVID B McMULLEN

**Interstate Commerce Commission**  
Washington, D.C. 20423

12/29/89

OFFICE OF THE SECRETARY

David B. McMullen  
Chapman & Cutler  
111 West Monroe St.  
Chicago, Illinois 60603

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/29/89 at 10:40am and assigned recordation number(s). 16693 & 16693-A

Sincerely yours,



Noreta R. McGee  
Secretary

Enclosure(s)

16693

DEC 29 1989 - 10 42 AM  
INTERSTATE COMMERCE COMMISSION

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SECURITY AGREEMENT AND TRUST INDENTURE

Dated as of December 14, 1989

Between

ITEL RAIL CORPORATION,  
as Debtor

and

CONTINENTAL BANK, NATIONAL ASSOCIATION,  
as Indenture Trustee

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931 USED RAILCARS

## TABLE OF CONTENTS

(Not a part of the Agreement)

<u>Section</u>	<u>Heading</u>	<u>Page</u>
	PARTIES .....	1
	RECITALS.....	1
SECTION 1.	GRANT OF SECURITY.....	1
1.1.	Equipment Collateral.....	2
1.2.	Unblended Leases and Additional Unblended Leases.....	2
1.3.	Other Assigned Agreements.....	4
1.4.	Duration of Security Interest.....	5
SECTION 2.	EXECUTION, PAYMENT, REGISTRATION, ETC. OF LOAN CERTIFICATES.....	5
2.1.	Execution of Secured Notes; Principal Amount.....	5
2.2.	Payment of Secured Notes.....	6
2.3.	Registered Secured Notes; the Register; Maximum Number of Holders.....	6
2.4.	Transfers and Exchanges of Secured Notes; Lost or Mutilated Secured Notes.....	7
2.5.	The New Secured Notes.....	8
2.6.	Cancellation of Secured Notes.....	9
2.7.	Indenture Trustee as Agent.....	9
2.8.	Ownership.....	9
SECTION 3.	COVENANTS AND WARRANTIES OF THE DEBTOR.....	10
3.1.	Debtor's Duties.....	10
3.2.	Warranty.....	10
3.3.	Further Assurances.....	11
3.4.	After-Acquired Property.....	11
3.5.	Recordation and Filing.....	11
3.6.	Duty to Number and Mark Equipment.....	11
3.7.	Rules, Laws and Regulations.....	12
3.8.	Maintenance of Equipment.....	12
3.9.	Insurance Requirement.....	13
3.10.	Annual Reports.....	15
3.11.	Inspection Rights.....	16
3.12.	Debtor's Use of Equipment.....	16
3.13.	Transfers by Debtor.....	16
3.14.	Merger, Consolidation of Sale of Assets.....	17
3.15.	Lease.....	17
3.16.	Power of Attorney.....	17
3.17.	Maintenance of Existence.....	18

<u>Section</u>	<u>Heading</u>	<u>Page</u>
3.18.	Chief Executive Office; Corporate Name Records.....	18
3.19.	Financial and Other Reports.....	18
3.20.	Inspection; Books and Records.....	20
3.21.	Financial Covenants.....	21
SECTION 4.	POSSESSION, USE AND RELEASE OF PROPERTY.....	21
4.1.	Possession of Collateral.....	21
4.2.	Release of Property and Liens.....	21
4.3.	Condemnation.....	22
4.4.	Release of Collateral - Consent of Noteholders.....	22
4.5.	Protection of Purchaser.....	22
SECTION 5.	EVENT OF LOSS.....	23
SECTION 6.	PREPAYMENT OF SECURED NOTES.....	23
6.1.	Prepayments.....	23
6.2.	Mandatory Prepayments.....	23
6.3.	Refinancing Prepayment.....	24
6.4.	Voluntary Prepayments.....	24
6.5.	Notice of Prepayment; Partial Prepayments.....	24
SECTION 7.	DEFAULTS AND OTHER PROVISIONS.....	25
7.1.	Events of Default.....	25
7.2.	Indenture Trustee's Rights.....	26
7.3.	Acceleration Clause.....	28
7.4.	Waiver by Debtor.....	29
7.5.	Effect of Sale.....	29
7.6.	Application of Proceeds.....	29
7.7.	Discontinuance of Remedies.....	30
7.8.	Cumulative Remedies.....	30
7.9.	Indemnity.....	31
SECTION 8.	THE INDENTURE TRUSTEE.....	32
8.1.	Duties of Indenture Trustee.....	32
8.2.	Indenture Trustee's Liability.....	32
8.3.	No Responsibility of Indenture Trustee for Recitals.....	34
8.4.	Certain Limitations on Indenture Trustee's Rights to Compensation and Indemnification.....	35
8.5.	Status of Moneys Received.....	35
8.6.	Resignation of Indenture Trustee.....	35
8.7.	Removal of Indenture Trustee.....	36
8.8.	Appointment of Successor Indenture Trustee.....	36

<u>Section</u>	<u>Heading</u>	<u>Page</u>
8.9.	Succession of Successor Indenture Trustee.....	37
8.10.	Eligibility of Indenture Trustee.....	37
8.11.	Successor Indenture Trustee by Merger.....	38
8.12.	Co-Trustees.....	38
SECTION 9.	SUPPLEMENTS; WAIVERS.....	38
9.1.	Supplemental Indentures Without Noteholders' Consent.....	38
9.2.	Waivers and Consents by Noteholders; Supplemental Indentures with Noteholders' Consent.....	39
9.3.	Notice of Supplemental Indentures.....	40
9.4.	Opinion of Counsel Conclusive as to Supplemental Indenture.....	40
SECTION 10.	MISCELLANEOUS.....	40
10.1.	Successors and Assigns.....	40
10.2.	Severability.....	40
10.3.	Communications.....	41
10.4.	Release.....	42
10.5.	Business Day.....	42
10.6.	Governing Law.....	42
10.7.	Indenture Trustee and Noteholder's Right to Perform.....	42
10.8.	Counterparts.....	42
10.9.	Headings.....	42
	Signature Page.....	43

ATTACHMENTS TO SECURITY AGREEMENT AND TRUST INDENTURE:

Exhibit A - Form of Secured Note  
Exhibit B - Form of Indenture Supplement  
Annex I - Definitions

## SECURITY AGREEMENT AND TRUST INDENTURE

THIS SECURITY AGREEMENT AND TRUST INDENTURE dated as of December 14, 1989 (the "Indenture") is between ITEL RAIL CORPORATION, a Delaware corporation (the "Debtor") and CONTINENTAL BANK, NATIONAL ASSOCIATION, a national banking association (the "Indenture Trustee"). The post office addresses of the Debtor and the Indenture Trustee are set forth in Section 10.3.

### R E C I T A L S:

A. The capitalized terms used in this Indenture shall have the meanings specified in Annex I hereto unless otherwise herein defined or the context hereof shall otherwise require.

B. The Debtor and the Indenture Trustee have entered into a Note Purchase Agreement providing for the commitment of the Note Purchaser to purchase on the Closing Date, Secured Notes of the Debtor in an aggregate principal amount not to exceed \$19,224,800.00. The Secured Notes are to be dated the date of issue, to bear interest from such date to maturity at the Coupon Rate payable semi-annually in arrears on June 26, 1990, and on the 26th day of each December and June thereafter to and including June 26, 2001, the principal portion thereof to be payable in accordance with the amortization schedule attached thereto. The Secured Notes are to be otherwise substantially in the form attached hereto as Exhibit A.

C. The Secured Notes and all principal thereof and interest (and premium, if any) thereon and all additional amounts and other sums at any time due and owing from or required to be paid by the Debtor under the terms of the Secured Notes, this Indenture or the Note Purchase Agreement are hereinafter sometimes referred to as "indebtedness hereby secured".

D. All of the requirements of law relating to the transaction contemplated hereby have been fully complied with and all other acts and things necessary to make this Indenture a valid, binding and legal instrument for the security of the Secured Notes have been done and performed.

### SECTION 1. GRANT OF SECURITY.

The Debtor, in consideration of the premises and other good and valuable consideration, receipt whereof is hereby acknowledged, and in order to secure the payment of the principal of and interest and premium, if any, on the Secured Notes according to their tenor and effect, and to secure the payment of all other indebtedness hereby secured and the performance and

observance of all of the Debtor's covenants and conditions contained in the Secured Notes and in this Indenture and in the Note Purchase Agreement, does, subject to the terms and provisions hereof, hereby convey, warrant, mortgage, assign, pledge and grant unto the Indenture Trustee, its successors in trust and assigns for the ratable use and benefit of the holders of the Secured Notes, a security interest in all and singular of the Debtor's right, title and interest in and to the properties, rights, interests and privileges described in Sections 1.1, 1.2 and 1.3 hereof (all of which properties being hereby mortgaged, assigned and pledged or intended so to be are hereinafter collectively referred to as the "Collateral"); provided, however, that any payments or amounts which have been distributed to the Debtor by the Indenture Trustee in accordance with the provisions of this Indenture, and to which the Debtor is entitled hereunder, shall not be subject to the security interest of this Indenture.

1.1. Equipment Collateral. Collateral includes (i) the Equipment described in Schedule 1 to the Indenture Supplement, the form of which is attached hereto as Exhibit B and made a part hereof (the "Indenture Supplement"); together with (i) all accessories, equipment, parts and appurtenances appertaining or attached to any of the Equipment hereinabove described, whether now owned or hereafter acquired, (ii) all substitutions, renewals or replacements of and additions, improvements, accessions and accumulations to any and all of said Equipment and (iii) all proceeds, including but not limited to, all insurance proceeds related thereto.

1.2. (a) Unblended Leases and Additional Unblended Leases. Subject to Sections 1.2(c) and 1.4(i) hereof, Collateral also includes all right, title and interest of the Debtor in and to each lease agreement described in Schedule 2 to the Indenture Supplement (the "Unblended Leases"), and in and to each and every other lease agreement hereafter entered into by the Debtor as lessor relating solely to the Equipment, or which may hereinafter be amended, supplemented or modified to relate solely to the Equipment (and, in either case, not having subject thereto any other rolling stock) (the "Additional Unblended Leases"), including but not limited to:

(i) all payments due and to become due under any Unblended Lease, whether as contractual obligations, damages or otherwise;

(ii) all of its claims, rights, powers, or privileges and remedies under any Unblended Lease and Additional Unblended Lease insofar as such rights relate to the Equipment and, to the extent permitted by a lessee under any Unblended Lease or Additional Unblended Lease, the right to cure a default by the Debtor under any Unblended Lease or Additional Unblended Lease;

(iii) the right to hold the signed copies of the Unblended Leases and the Additional Unblended Leases;

(iv) all of its rights under any Unblended Lease or Additional Unblended Lease to make determinations, to exercise any election (including, but not limited to, election of remedies) or option or to give or receive any notice, consent, waiver or approval together with full power and authority with respect to any Unblended Lease or Additional Unblended Lease to demand, receive, enforce, collect or give receipt for any of the foregoing rights or any property the subject of any of the Unblended Leases or Additional Unblended Leases, to enforce or execute any checks, or other instruments or orders, to file any claims and to take any action which (in the opinion of the Indenture Trustee) may be necessary or advisable in connection with any of the foregoing insofar, but only insofar, as such rights relate to the Equipment which is subject to such Unblended Leases and Additional Unblended Leases, together with all extensions, renewals and replacements of such Unblended Leases and Additional Unblended Leases, whether now owned or hereafter acquired, and all income, profits and avails therefrom, all rights thereunder and all proceeds thereof (insofar as the same relate to or are derived from the Equipment which is subject to such Unblended Leases and Additional Unblended Leases);

(b) Blended Lease Payment Rights and Additional Blended Lease Payment Rights. Subject to Section 1.2(c) hereof, Collateral also includes (i) all title and interest of the Debtor to all payments due or to become due with respect to Equipment whether as contractual obligations, damages or otherwise, under each lease agreement described in Schedule 3 to the Indenture Supplement (the "Blended Leases"), (each such right, title or interest with respect thereto being a "Blended Lease Payment Right") and (ii) all right, title and interest of the Debtor to all payments due or to become due with respect to Equipment, whether as contractual obligations, damages or otherwise, under all other lease agreements hereafter entered into by the Debtor as lessor and which does not constitute an Unblended Lease or an Additional Unblended Lease (each such right, title or interest with respect thereto being an "Additional Blended Lease Payment Rights" and each such other lease agreements being "Additional Blended Leases").

(c) Debtor's Rights in Assigned Leases. Notwithstanding anything contained in this Indenture, until the occurrence and continuance of an Event of Default:

(i) the Debtor may exercise all of the Debtor's rights, powers, privileges and remedies under the Assigned Leases, including without limitation, the right to receive any and all monies due or to become due under the Assigned Leases, and to retain all original copies of Assigned Leases; provided that without the prior written consent of the Indenture Trustee, the Debtor will not enter into any amendment, modification, waiver or termination of any provision of the Assigned Leases other than those which do not have a material adverse effect on the value of the interest of the Indenture Trustee herein.

(ii) the Debtor shall be entitled to retain possession of the signed copies of the Assigned Leases. In the event that a Default or Event of Default shall have occurred and be continuing, the Debtor shall immediately upon the request of the Indenture Trustee deliver either (a) the signed copy of each Unblended Lease and each Additional Unblended Lease which has been designated as an original for purposes of the Uniform Commercial Code or (b) if a signed copy of such Unblended Lease or Additional Unblended Lease has not been designated as an original for purpose of the Uniform commercial Code, all the signed copies of such Unblended Lease or Additional Unblended Lease in the Debtor's possession to the Indenture Trustee.

1.3. Other Assigned Agreements. Collateral also includes all right, title, interest, claims and demands of the Debtor in, to and under any and all contracts and agreements (other than the Assigned Leases) relating to the Equipment or any rights or interests therein to which the Debtor is now or may hereafter be a party to the extent that the foregoing relate to the Equipment (collectively, the "Assigned Agreements"), together with all rights, powers, privileges, license, easements, options and other benefits of the Debtor under each thereof, including, without limitation, the right to make all waivers and agreements, to give and receive all notices and other instruments or communications, to take such action upon the occurrence of a default thereunder, including the commencement, conduct and consummation of legal, administrative or other proceedings, as shall be permitted thereby or by law, and to do any and all other things which the Debtor is or may be entitled to do thereunder (collectively the "Future Collateral"); provided however that the grant of a security interest under this Section 1.3 shall not attach or become effective until the earlier to occur of July 15, 1991 or the payment in full of the Medium Term Notes (the "Trigger Date") and no such Future Collateral shall constitute Collateral until the Trigger Date.

1.4. Duration of Security Interest. The Indenture Trustee, its successors in trust and assigns shall have and hold the Collateral forever, provided, always, however, that (i) the security interest of the Indenture Trustee in any Unblended Lease or Additional Unblended Lease shall terminate if such Lease shall be amended, supplemented or modified to include as rolling stock leased thereunder, rolling stock which is not Equipment and the Indenture Trustee shall, simultaneously with such termination, obtain a security interest in the payments due or to become due with respect to Equipment under the resulting Additional Blended Lease as set forth in Section 1.2(b) hereof, and (ii) such security interest is granted upon the express condition that if the Debtor shall pay or cause to be paid all the indebtedness hereby secured then these presents and the estate hereby granted and conveyed shall cease and this Indenture shall become null and void, and in such event the Indenture Trustee shall (upon the request of the Debtor and at no cost to the Indenture Trustee) execute and deliver to the Debtor such instrument or instruments as may be necessary or appropriate in order to make clear upon the public records the title of the Debtor in and to the Collateral; otherwise it shall remain in full force and effect.

SECTION 2. EXECUTION, PAYMENT, REGISTRATION, ETC. OF LOAN CERTIFICATES.

2.1. Execution of Secured Notes; Principal Amount. (a) The Secured Notes shall be signed on behalf of the Debtor by any Person who, at the date of the actual execution of such Secured Note, shall be a proper officer of the Debtor. Only such Secured Notes as shall bear thereon a certificate of authentication substantially in the form set forth in Exhibit A hereto shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate by the Indenture Trustee upon any Secured Note executed by the Debtor shall be conclusive evidence that the Secured Note so authenticated has been duly authenticated and delivered hereunder and that the holder is entitled to the benefits of this Indenture. The authentication by the Indenture Trustee of any Secured Note issued hereunder shall not be construed as a representation or warranty by the Indenture Trustee as to the validity or security of this Indenture or of such Secured Note, and the Indenture Trustee shall in no respect be liable or answerable for the use made of such Secured Note or the proceeds thereof. The Indenture Trustee shall, upon presentation to it of Secured Notes duly executed on behalf of the Debtor, authenticate such Secured Notes upon the written request of the Debtor so to do and shall thereupon deliver such Secured Notes to or upon the written order of the Debtor signed by any person who, at the date of the actual execution of such order, shall be a proper officer of the Debtor.

(b) The principal amount of the Secured Notes to be issued hereunder shall not exceed \$19,224,800, except as provided in Section 2.4(a) or (d).

2.2. Payment of Secured Notes. (a) The principal of, premium, if any, and interest on the Secured Notes shall be payable prior to 12:00 p.m. Chicago, Illinois time on the date due at the principal office of the Indenture Trustee, in lawful money of the United States of America. Payment of principal and interest on the Secured Notes shall be made only upon presentation of such Secured Notes to the Indenture Trustee for notation thereon of the amount of such payment. Any payment or prepayment of amounts due on the Secured Notes in accordance with the terms thereof and hereof which is due on a date which is not a Business Day shall be payable on the immediately succeeding Business Day.

(b) Notwithstanding the foregoing provisions of paragraph (a) of this Section 2.2, if any Secured Note is held by a Noteholder which is an institutional investor, the Indenture Trustee shall, if so requested in writing by such Noteholder (and Section 5 of the Note Purchase Agreement (a copy of which has been provided to the Indenture Trustee) shall constitute such written request in the case of the Note Purchaser), make payment of interest on such Secured Note and make payments or prepayments of the principal thereof, and any premium, by check, duly mailed, by first-class mail, postage prepaid, or delivered to such Noteholder at its address appearing on the Register without surrender or presentation of such Secured Note and without any notation of such payment being made thereon, and such Noteholder (or Person for whom such Noteholder is a nominee) will, before selling, transferring or otherwise disposing of such Secured Note, present such Secured Note to the Indenture Trustee for transfer and notation as provided in Sections 2.4 and 2.5. Upon written notice from any Noteholder which is an institutional investor or its nominee given not less than thirty (30) days prior to the payment or prepayment of the Secured Notes (and Section 5 of the Note Purchase Agreement shall constitute such written notice in the case of the Note Purchasers), the Indenture Trustee will cause all payments and prepayments of the principal of, and interest and premium, if any, on the Secured Note held by such Noteholder or its nominee to be made to any bank in the continental United States as shall be specified in such notice by wire transfer of immediately available Federal Reserve funds to such bank, on each such date such payment or prepayment is due, provided that such bank has facilities for the receipt of a wire transfer. The Indenture Trustee will transmit any such wire transfer from its offices not later than 1:00 P.M., Chicago, Illinois time, on each such date payment or prepayment is due provided immediately available Federal funds have been received by the Indenture Trustee prior to 12:00 P.M., Chicago, Illinois time.

2.3. Registered Secured Notes; the Register; Maximum Number of Holders. The Secured Notes shall be issuable as fully registered Secured Notes in the form attached hereto as Exhibit A. The Debtor shall cause to be kept at the principal

office of the Indenture Trustee a register for the registration and transfer of Secured Notes (herein called the "Register"). The names and addresses of the holders of the Secured Notes, the transfers of the Secured Notes and the names and addresses of the transferees of all Secured Notes shall be registered in the Register.

Except as otherwise agreed by the Debtor, the Debtor shall not be obligated to issue any new Secured Note to any holder if as a result the outstanding Secured Notes would be held by more than a total of 15 different investors unrelated in decision-making authority.

2.4. Transfers and Exchanges of Secured Notes; Lost or Mutilated Secured Notes. (a) The holder of any Secured Note may transfer a Secured Note upon the surrender thereof at the principal office of the Indenture Trustee, or upon notice to the Indenture Trustee as provided in Section 5 of the Note Purchase Agreement. If such Noteholder has surrendered its Secured Note to the Indenture Trustee, thereupon, the Debtor shall execute in the name of the transferee a new Secured Note or Secured Notes in an aggregate principal amount equal to the original principal amount of the Secured Note so surrendered, and the Indenture Trustee shall authenticate and deliver such new Secured Note or Secured Notes to such transferee; provided, however, that except as otherwise agreed by the Debtor, no such new Secured Note is required to be delivered to any holder in violation of the provisions of Section 2.3 hereof or in a principal amount less than \$500,000.

(b) All Secured Notes presented or surrendered for transfer shall be accompanied (if so required by the Debtor or by the Indenture Trustee) by a written instrument or instruments of assignment or transfer, in form satisfactory to the Indenture Trustee, duly executed by the holder or by its attorney duly authorized in writing. The Debtor and the Indenture Trustee shall not be required to make a transfer or an exchange of any Secured Note for a period of ten (10) days preceding any payment date with respect thereto.

(c) No notarial seal shall be necessary for the transfer or exchange of any Secured Note pursuant to this Section 2.4, and the holder of any Secured Note issued as provided in this Section 2.4 shall be entitled to any and all rights and privileges granted under this Indenture to a holder of a Secured Note.

(d) In case any Secured Note shall become mutilated or be destroyed, lost or stolen, the Debtor, upon the written request of the holder thereof, shall execute and the Indenture Trustee shall authenticate and deliver a new Secured Note in exchange and substitution for the mutilated Secured Note, or in lieu of and in

substitution for the Secured Note so destroyed, lost or stolen. The applicant for a substitute Secured Note shall furnish to the Debtor and to the Indenture Trustee such security or indemnity as may be required by them to save each of them harmless from any loss, resulting from the authentication and delivery of the substitute Secured Note, however remote, including claims for principal of and premium, if any, and interest on the purportedly lost, stolen or destroyed Secured Note, and the applicant shall also furnish to the Debtor and to the Indenture Trustee evidence to their satisfaction of the mutilation, destruction, loss or theft of the applicant's Secured Note and of the ownership thereof. In case any Secured Note which has matured or is about to mature shall become mutilated or be destroyed, lost or stolen, the Debtor may, instead of issuing a substitute Secured Note, pay or authorize the payment of the same (without surrender thereof except in the case of a mutilated Secured Note) if the applicant for such payment shall furnish to the Debtor and to the Indenture Trustee such security or indemnity as they may require to save them harmless, and shall provide evidence to the satisfaction of the Debtor and the Indenture Trustee of the mutilation, destruction, loss or theft of such Secured Note and the ownership thereof. If an institutional investor or its nominee is the owner of any mutilated, destroyed, lost or stolen Secured Note, then the affidavit of its Secretary or Assistant Secretary in form reasonably satisfactory to the Debtor and the Indenture Trustee setting forth the fact of destruction, loss or theft and such Loan Participant's ownership of the Secured Note at the time of such mutilation, destruction, loss or theft shall be accepted as satisfactory evidence thereof and no indemnity shall be required as a condition to execution and delivery of a new Secured Note other than the written agreement of such Noteholder, in form reasonably satisfactory to the Debtor and the Indenture Trustee, to indemnify the Debtor and the Indenture Trustee from all risks resulting from the authentication and delivery of the substitute Secured Note.

2.5. The New Secured Notes. (a) Each new Secured Note (herein, in this Section 2.5, called a "New Secured Note") issued pursuant to Section 2.4(a) or (d) in exchange for or in substitution or in lieu of an outstanding Secured Note (herein, in the Section 2.5, called an "Old Secured Note") shall be dated the date of such Old Secured Note. The Indenture Trustee shall mark on each New Secured Note (i) the date to which principal and interest have been paid on such Old Secured Note, and (ii) all payments and prepayments of principal previously made on such Old Secured Note which are allocable to such New Secured Note. Interest shall be deemed to have been paid on such New Secured Note to the date on which interest shall have been paid on such Old Secured Note, and all payments and prepayments of principal marked on such New Secured Note, as provided in clause (ii) above, shall be deemed to have been made thereon.

(b) Upon the issuance of a New Secured Note pursuant to Section 2.4(a) or (d), the Debtor may require from the Noteholder the payment of a sum to reimburse it for, or to provide it with funds for, the payment of any tax or other governmental charge or any other charges and expenses connected therewith which are paid or payable by the Debtor and the Noteholder of such new Secured Note shall, promptly upon request by the Debtor, so reimburse the Debtor.

(c) All New Secured Notes issued pursuant to Section 2.4(a) or (d) in exchange for or in substitution or in lieu of Old Secured Notes shall be valid obligations of the Debtor evidencing the same debt as the Old Secured Notes and shall be entitled to the benefits and security of this Indenture to the same extent as the Old Secured Notes.

(d) Upon the issuance of any Secured Note pursuant to this Indenture, the Indenture Trustee shall deliver to the holder thereof an amortization schedule with respect to such Secured Note setting forth the amount of the scheduled principal to be paid on such Secured Note after the date of issuance thereof and the unpaid principal balance of such Secured Note after each such payment.

2.6. Cancellation of Secured Notes. All Secured Notes surrendered for the purpose of payment, redemption, transfer or exchange shall be delivered to the Indenture Trustee for cancellation or, if surrendered to the Indenture Trustee, shall be cancelled by it, and no Secured Notes shall be issued in lieu thereof except as expressly required or permitted by any of the provisions of this Indenture. The Indenture Trustee shall deliver a certificate to the Debtor specifying any cancellation of Secured Notes which has been made. All such cancelled Secured Notes shall be held by the Indenture Trustee until this Indenture shall have been discharged, at which time the Indenture Trustee shall either deliver such cancelled Secured Notes in a manner necessary to effect the discharge and release of this Indenture or, if no such delivery is necessary, such Secured Notes shall be delivered to or disposed of as directed by the Debtor.

2.7. Indenture Trustee as Agent. The Indenture Trustee is hereby appointed the agent of the Debtor for the payment, registration, transfer and exchange of Secured Notes. Subject to the provisions of Section 2.2, Secured Notes may be presented for payment at, and notices or demands with respect to the Secured Notes or this Indenture may be served or made at, the principal corporate trust office of the Indenture Trustee.

2.8. Ownership. The Person in whose name any Secured Note shall be registered shall be deemed and treated as the owner thereof for all purposes of this Indenture and neither the Debtor nor the Indenture Trustee shall be affected by any notice to the

contrary. Payment of or on account of the principal of, premium, if any, and interest on such Secured Note shall be made to another person only to or upon the order in writing of such registered owner. For the purpose of any request, direction or consent hereunder, the Debtor and the Indenture Trustee may deem and treat the registered owner of any Secured Note as the owner and holder thereof without production of such Secured Note.

### SECTION 3. COVENANTS AND WARRANTIES OF THE DEBTOR.

The Debtor covenants, warrants and agrees for the benefit of the Indenture Trustee and the holders of the Secured Notes as follows:

3.1. Debtor's Duties. The Debtor covenants and agrees well and truly to perform, abide by and be governed and restricted by each and all of the terms, provisions, restrictions, covenants and agreements set forth in this Indenture and the Note Purchase Agreement, and in each and every supplement thereto or amendment thereof which may at any time or from time to time be executed and delivered by the parties thereto or their successors and assigns, to the same extent as though each and all of said terms, provisions, restrictions, covenants and agreements were fully set out herein and as though any amendment or supplement to the Note Purchase Agreement were fully set out in an amendment or supplement to this Indenture. The Debtor undertakes to perform only such duties as are expressly and specifically set forth herein and in the other Operative Agreements and no implied obligations or covenants shall be read into this Indenture or any other Operative Agreement against the Debtor.

3.2. Warranty. The Debtor has the right, power and authority to grant a valid first priority Lien and security interest in the Collateral to the Indenture Trustee for the uses and purposes herein set forth. No Lien currently attaches to the Collateral other than this Indenture and the Debtor will warrant and defend the title to the Collateral against all claims and demands of all persons other than the Indenture Trustee. The Debtor will not create, assume or suffer to exist any Lien on the Collateral other than Permitted Liens and the Debtor will, at its own cost and expense promptly take such action as may be necessary to duly discharge any other Lien on the Collateral. Without limiting the foregoing, there is no financing statement or other filed or recorded instrument in which the Debtor (or any company merged into or consolidated with the Debtor, or the obligations of which have been assumed by the Debtor) is named and which the Debtor (or any company merged into or consolidated with the Debtor, or the obligations of which have been assumed by the Debtor) has signed, as debtor or mortgagor, now on file in any public office covering any of the Collateral excepting the financing statements or other instruments filed or to be filed in respect of and for the security interest provided for herein.

3.3. Further Assurances. The Debtor will provide the Indenture Trustee prompt written notice (but in any event within 15 days) of the date on which (i) the Debtor is to enter into as Lessor an Assigned Lease or (ii) an Assigned Lease (other than an Additional Blended Lease) is to become an Additional Blended Lease or (iii) an Assigned Lease (other than an Additional Unblended Lease) is to become an Additional Unblended Lease. The Debtor will, on or prior to such occurrence or upon the request of the Indenture Trustee or any Noteholder, and, in either case, at no expense to the Indenture Trustee or any Noteholder, (a) execute an Indenture Supplement in the form of Exhibit B attached hereto specifically identifying the Equipment and/or any such Assigned Lease, and (b) do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, transfers and assurances necessary or proper for the perfection of the security interest being herein provided for in the Collateral, whether now owned or hereafter acquired.

3.4. After-Acquired Property. Any and all property described or referred to in the granting clauses hereof which is hereafter acquired shall ipso facto, and without any further conveyance, assignment or act on the part of the Debtor or the Indenture Trustee, become and be subject to the security interest herein granted as fully and completely as though specifically described herein, but nothing in this Section 3.4 contained shall be deemed to modify or change the obligation of the Debtor under Section 3.3 hereof.

3.5. Recordation and Filing. The Debtor will cause this Indenture and all supplements hereto, and all financing and continuation statements and similar notices required by applicable law, at all times to be kept, recorded and filed at no expense to the Indenture Trustee or any Noteholder with the ICC and the Registrar General of Canada and in such other places as may be requested in writing by the Indenture Trustee in order to fully preserve and protect the rights of the Indenture Trustee hereunder.

3.6. Duty to Number and Mark Equipment. On or prior to the Closing Date of each Unit, the Debtor will cause each Unit to be numbered with the reporting mark shown on the Indenture Supplement. As soon as practicable but in any event not later than the first anniversary of the Closing Date, the Debtor will keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting colors upon each side of each Unit, in letters not less than one inch in height, substantially as follows:

"Owned by or subject to a security interest in  
favor of a bank or trustee under an agreement  
recorded with the Interstate Commerce Commission"

with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the rights of the Indenture Trustee hereunder. Except as provided hereinabove, the Debtor will not place any such Units in operation or exercise any control or dominion over the same until the required legend shall have been so marked on both sides thereof, and will replace promptly any such names and word or words which may be removed, defaced, obliterated or destroyed. The Debtor will not change the reporting mark of any Unit except in accordance with a statement of new reporting marks to be substituted therefor, which statement shall be delivered to the Indenture Trustee by the Debtor and a supplement thereto with respect to such new reporting marks shall be filed or recorded in all public offices where this Indenture shall have been filed or recorded.

3.7. Rules, Laws and Regulations. The Debtor agrees to comply with all governmental laws, regulations, requirements and rules (including, without limitation, the rules of the Federal Railroad Administration, the Interstate Commerce Commission and the Interchange Rules or supplements thereto of the Mechanical Division, Association of American Railroads, as the same may be in effect from time to time) (the "Interchange Rules") with respect to the use and maintenance of each Unit subject to this Indenture. In case any equipment or appliance is required to be altered, added, replaced or modified in any Unit in order to comply with such laws, regulations, requirements and rules, the Debtor agrees to make such alterations, additions, replacements and/or modifications at its own expense; provided, however, that, so long as no Event of Default has occurred and is continuing, the Debtor may, in good faith and by appropriate legal proceedings, contest the validity or application of any such law, regulation, requirement or rule in any reasonable manner which does not adversely affect the rights or interests of the Indenture Trustee in the Equipment or hereunder.

3.8. Maintenance of Equipment. (a) The Debtor shall, at its own cost and expense, maintain and keep the Equipment, each Unit thereof, and the component Parts thereof in good order and repair, ordinary wear excepted, to a standard at least equal to the standard of maintenance performed on other similar equipment owned or leased by the Debtor (provided that such standard shall be at least equal to the standard of maintenance performed on similar equipment owned or leased by Class I line-haul railroads), ordinary wear excepted, and suitable for use in interchange service in accordance with the Interchange Rules and suitable for use by Class I line-haul railroads. Any Part which is a replacement of or substitution for a Part existing on the Closing Date (and any successive replacements for or substitutions of such Part) and which is installed pursuant to this Section 3.8(a) shall be immediately deemed to be an addition and appurtenance to the

unit to which the same is attached. The Debtor shall maintain all records, logs and other materials required by the American Association of Railroads, the Federal Railroad Administration or any other governmental authority having jurisdiction over the Equipment or the Debtor, to be maintained in respect of the Equipment, and shall permit the Indenture Trustee and any Noteholder to inspect the same in accordance with Section 3.20 hereof.

(b) Except as otherwise provided herein, the Debtor may modify any Unit or make additions or improvements thereto; provided that all modifications, additions or improvements to any Unit (the "Modifications") shall not change the nature or diminish the value, utility or economic life of such Unit. Any Modifications shall be immediately deemed to be an addition and appurtenance to the Unit to which the same is attached.

3.9. Insurance Requirement. (a) The Debtor agrees that it will, at its own cost and expense: (i) keep each Unit insured against loss or damage by fire, collision, derailment, explosion and such other risks of loss and damage as are regularly and customarily insured against by Persons similar to the Debtor with respect to similar equipment owned, leased or operated by such Persons, in an amount not less than the then unpaid balance on the Notes; and (ii) maintain third party public liability insurance with respect to the Equipment against damage because of bodily injury, including death, or damage to property of others, in an amount not less than the greater of (A) the amount of similar insurance maintained by the Debtor with respect to similar equipment which it owns, leases or operates, or (B) the amount of similar insurance regularly and customarily maintained by Persons similar to the Debtor with respect to similar equipment owned, leased or operated by such Persons; provided, however, that the Debtor may self-insure with respect to loss or damage to the Equipment as required by clause (i) above, and against third party public liability with respect to the Equipment as required by clause (ii) above, and insurance policies may contain deductible provisions, in each such case, in amounts that do not exceed the lower of (x) the amount customarily maintained by the Debtor with respect to similar equipment which it owns or leases, or (y) the amount maintained by Persons similar to the Debtor with respect to similar equipment owned or leased by such Persons; and provided further that (1) any such insurance coverage may be provided under blanket policies maintained by the Debtor so long as such policies otherwise comply with the provisions of this Section 3.9, and (2) the aggregate of any deductible provision in any such blanket policy and any such self-insurance shall not exceed two percent (2%) of the Debtor's Tangible Net Worth (as shown in the financial statements for the most recently completed fiscal year of the Debtor for which such financial statements are available). All such insurance shall cover the interests of each Noteholder and the Indenture Trustee, as their interests may appear, in the

Equipment; provided that the Indenture Trustee or any Noteholder shall not be responsible for the payment of the premiums on such insurance. The Debtor warrants and affirms that it will satisfy all obligations under such policy necessary to keep such insurance in full force and effect. The Debtor shall cause the property insurance on the Equipment required by clause (i) above to provide that, so long as the lien of this Indenture shall remain in effect, the proceeds, if any, shall be payable to the Indenture Trustee under a standard mortgage loss payable clause reasonably satisfactory to the Indenture Trustee. To the extent permitted by the terms of applicable insurance coverage, any loss under the property insurance policy referred to in clause (i) above shall be adjusted with the Debtor, subject to the reasonable approval of the Indenture Trustee; provided that no such adjustment shall constitute a waiver of the respective rights of the named insureds under such insurance policy.

(b) All insurance policies required to be maintained by the Debtor pursuant to this Section 3.9 shall contain, so long as any Secured Notes shall remain outstanding, (i) an agreement by the insurer not to exercise any rights of subrogation of the insurer against any Noteholder or the Indenture Trustee, and (ii) a waiver of any rights of the insurer to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of liability of any Noteholder or the Indenture Trustee.

(c) The Debtor shall, prior to the Closing Date and annually thereafter within thirty (30) days following each anniversary of the Closing Date, furnish the Indenture Trustee with a certificate signed by the insurer or an independent insurance broker showing the insurance then maintained by the Debtor pursuant to this Section 3.9 and that all premiums thereon have been paid or with other evidence of maintenance of the insurance required hereunder, and, with respect to any renewal policy or policies, shall furnish certificates or binders evidencing such renewal as soon as practicable, but in no event later than thirty (30) days after such renewal is effected or the expiration date of the original policy or policies. The Debtor shall provide or cause its insurance carrier(s) or broker to provide to the Indenture Trustee at least thirty (30) days' prior written notice of the date on which any insurance maintained hereunder will be cancelled or materially reduced in coverage, or of the date of expiration of any insurance maintained pursuant thereto which the Debtor has been unable to renew. All insurance required to be maintained by the Debtor pursuant to this Section 3.9 shall be carried with insurance companies or insurers having all necessary power and authority to furnish the required coverage, and, in the case of insurance carriers or insurers organized in the United States, rated "A-/VI" or higher by A.M. Best Company, Inc., and in the case of insurance carriers or insurers not organized in the United States, such carriers or

insurers shall be underwriters that are members or syndicates of Lloyds of London.

(d) The proceeds of any property or casualty insurance received by the Indenture Trustee shall be held by such party until the repairs referred to in clause (a) below are made as specified therein or payment of the Loan Value is made, but in no case longer than one hundred eighty (180) days, and will be paid either: (a) to the Debtor promptly following receipt by the Indenture Trustee of a written application signed by the Debtor for payment of, or to reimburse the Debtor for payment of, the costs of repairing or restoring the Units which have been damaged, so long as (i) the Debtor shall have complied with the applicable provisions of this Indenture, (ii) no Default or Event of Default shall have occurred and be continuing, (iii) any damage to such Units shall have been fully repaired or restored, and (iv) the Debtor shall have delivered with such application a certificate executed by an engineering or financial officer of the Debtor to such effect accompanied by reasonably satisfactory evidence of such cost; provided, however, that if the Debtor has not taken such actions within one hundred eighty (180) days of the receipt of such proceeds, then such proceeds shall be applied by the Indenture Trustee as follows:

(A) First, to the prepayment of the Secured Notes, all in the manner and to the extent provided for by Section 5 hereof; and

(B) Second, the balance, if any, of such insurance proceeds held by the Indenture Trustee after making the applications provided for by the preceding subparagraph (A) shall be released to or upon the order of the Debtor; or

(e) if an Event of Loss with respect to such Unit has been declared and the Debtor has paid the Loan Value due as a result thereof, such proceeds shall be promptly released to the Debtor.

3.10. Annual Reports. On or before June 30, 1991, and on each June 30 thereafter, the Debtor will furnish to the Indenture Trustee an accurate statement, as of the preceding December 31, (a) showing the amount, description and reporting marks of the Units then part of the Collateral, the amount, description and reporting marks of all Units that may have suffered an Event of Loss during the twelve (12) months ending on December 31 (or since the Closing Date, in the case of the first such statement), and such other information regarding the condition or repair of the Equipment as the Indenture Trustee may reasonably request, and (b) stating that, in the case of all Equipment repainted during the period covered by such statement, the marking required by Section 3.6 hereof shall have been preserved or replaced.

3.11. Inspection Rights. The Indenture Trustee and any Noteholder each shall have the right, but not the obligation, at their respective sole cost, expense and risk, except as provided below, by their respective authorized representatives, to the extent within the Debtor's control, to inspect the Equipment and the Debtor's records with respect thereto, during the Debtor's normal business hours and upon reasonable prior notice to the Debtor, to confirm the existence and proper maintenance of the Equipment; provided, however, that upon the occurrence and during the continuance of an Event of Default, such inspection shall be at the Debtor's cost and expense for out-of-pocket expense; and provided, further, that the Debtor shall not be liable, except in the case of negligence or willful misconduct of the Debtor or of its employees or agents, for any injury to, or the death of, any Person exercising, either on behalf of the Indenture Trustee or any Noteholder or any prospective purchaser, the rights of inspection granted under this Section 3.11.

3.12. Debtor's Use of Equipment. The Debtor may use the Equipment in any lawful manner whatsoever in the United States and Canada and shall not permit more than de minimis use of the Equipment in Mexico. The Debtor shall at no time, assign or permit the assignment of, or permit any lessee to assign or permit the assignment of, any Unit for use in service other than within the United States and Canada and shall promptly provide notice to the Indenture Trustee of any lease or assignment to a Canadian entity.

3.13. Transfers by Debtor. The Debtor shall not, without the prior consent of the Indenture Trustee, assign, sell, transfer, pledge or encumber any of the Equipment; provided, however, that, so long as, immediately before and immediately after such transfer, no Event of Default shall have occurred and be continuing, the Debtor may (a) lease or sublease any Unit of Equipment in the ordinary course of its business, and (b) transfer any Unit of Equipment to an Affiliate of the Debtor; and provided, further, that (i) such Affiliate is a corporation incorporated in any State of the United States or the District of Columbia which shall have all necessary authorizations and approvals to own and operate such assets, (ii) the obligations of such Affiliate are guaranteed by the Debtor pursuant to a guaranty agreement, in form and substance reasonably acceptable to the Indenture Trustee, and (iii) the Debtor shall deliver to the Indenture Trustee (A) an opinion of legal counsel, in form and substance reasonably acceptable to Indenture Trustee, regarding the taking of all corporate and other actions necessary in connection with such transfer and the compliance with the conditions set forth in this Section 3.13, and (B) an Officer's Certificate to the effect that such assignment by the Debtor will not render the Debtor insolvent nor is such assignment being made in contemplation of the Debtor's insolvency; the property remaining in the hands of the Debtor after such assignment is not unreasonably small capital for the

operation of its business as it is then conducted or proposed to be conducted; the Debtor does not intend to or believe that, immediately after such assignment, it will incur debts beyond its ability to pay as they mature; and the Debtor has no actual intent to hinder, delay or defraud either present or future creditors.

3.14. Merger, Consolidation or Sale of Assets. So long as no Event of Default shall have occurred and be continuing, nothing in this Indenture shall be deemed to restrict the right of the Debtor, without the consent of the Indenture Trustee or any Noteholder, to transfer the Equipment and its right to the possession and use of the Equipment to any corporation into or with which the Debtor shall have merged or consolidated or which shall have acquired all or substantially all of the assets of the Debtor; provided that (a) such corporation shall be, effective upon such transfer, a corporation incorporated in any state of the United States or the District of Columbia which shall have all necessary authorizations and approvals to own and operate such assets, (b) such corporations shall have duly assumed in writing (or shall be deemed to have assumed by operation of law) the obligations of the Debtor hereunder and under the Note Purchase Agreement, and (c) after giving effect to such transaction, such corporation shall be in compliance with the financial covenants set forth in Section 3.21 hereof.

3.15. Lease. (a) In the event the Debtor shall from time to time enter into any lease covering any Unit as permitted in Section 3.13(a) hereof, the Debtor shall thereupon promptly deliver to the Indenture Trustee a copy of such lease and shall promptly take such action with respect thereto as the Indenture Trustee shall direct the Debtor in writing in accordance with Section 3.3 hereof. No such lease shall in any way discharge or diminish any of the Debtor's obligations hereunder, and the Debtor shall remain liable hereunder for the performance of all the terms, conditions and provisions of this Indenture and to the same extent as if such lease had not been entered into.

(b) The Debtor covenants and agrees to warrant and defend the right, title and interest of the Indenture Trustee granted and assigned hereby with respect to the Assigned Leases against the claims and demands of any Person and upon the occurrence and during the continuance of an Event of Default hereby grants the Indenture Trustee full power and authority to take all actions as the Indenture Trustee deems necessary to obtain the benefits of such grant and assignment with respect to the Assigned Leases including, without limitation, to make all claims, take all actions and obtain all payments with respect thereto.

3.16. Power of Attorney. The Debtor does hereby irrevocably constitute and appoint the Indenture Trustee, upon the occurrence and during the continuance of an Event of Default, its

true and lawful attorney with full power of substitution, for it and in its name, place and stead, to ask, demand, collect, receive, receipt for, sue for, compound and give acquittance for any and all rents, income and other sums which are assigned under Section 1 hereof with full power to settle, adjust or compromise any claim thereunder with respect to such assigned sums as fully as the Debtor could itself do, and to endorse the name of the Debtor on all commercial paper given in payment or in part payment thereof, and, subject to the limitations set forth in this Indenture and so long as an Event of Default has occurred and is continuing, in its discretion to file any claim or take any other action or proceedings, either in its own name or in the name of the Debtor or otherwise, which the Indenture Trustee may deem necessary or appropriate to protect and preserve the right, title and interest of the Indenture Trustee in and to such rents and other sums and the security intended to be afforded hereby.

3.17. Maintenance of Existence. Subject to the provisions of Section 3.14 hereof, the Debtor will preserve and keep in full force and effect its existence, rights and franchises and all licenses and permits necessary to the performance of its obligations hereunder.

3.18. Chief Executive Office; Corporate Name Records. The chief executive office of the Debtor is located at 55 Francisco Street, San Francisco, California 94133, and the Debtor will not change the same without giving at least 30 days prior written notice to the Indenture Trustee.

3.19. Financial and Other Reports. The Debtor agrees that it will furnish directly to the Indenture Trustee and each Noteholder which is an institutional investor, at the address thereof appearing in the Register, or as the Debtor has otherwise been directed in writing by such Noteholder, the following:

(a) As soon as available and in any event within sixty (60) days after the end of each quarterly period, except the last, consolidated balance sheets of the Debtor and its Subsidiaries as at the end of such period, together with the related consolidated statements of cash flows of the Debtor and its Subsidiaries for the period beginning on the first day of such fiscal year and ending on the last day of such quarterly period, setting forth (except with respect to the quarterly financial statements for each quarter in the fiscal year ending December 31, 1989 and the first two quarters in the fiscal year ending December 31, 1990) in each case in comparative form the figures for the corresponding periods of the previous fiscal year, all in reasonable detail and certified by the principal financial officer of the Debtor;

(b) As soon as available and in any event within ninety (90) days after the last day of each fiscal year, a copy of the Debtor's annual audited report covering the operations of the Debtor and its Subsidiaries, including consolidated balance sheets, and related consolidated statements of income and retained earnings and consolidated statements of cash flows of the Debtor and its Subsidiaries for such fiscal year, setting forth (except with respect to the financial statements for the fiscal year ending December 31, 1989) in each case in comparative form the figures for the previous fiscal year, all in reasonable detail, which statements will have been certified by a firm of independent public accounts of recognized national standing selected by the Debtor;

(c) Within the period provided in subparagraphs (a) and (b) above, a certificate, signed by the principal financial officer of the Debtor, to the effect that the signer thereof is familiar with the terms and provisions of this Indenture and the Note Purchase Agreement, and that at the date of said certificate the signer is not aware of any Default or Event of Default, or if the signer is aware of any such Default or Event of Default, he shall disclose in such certificate the nature thereof and the nature of the action the Borrower is taking or proposes to take with respect thereto and setting forth sufficient financial data to evidence compliance by the Debtor with the financial covenants contained in Section 3.21;

(d) Promptly upon their becoming available, copies of (a) all financial statements, reports, notices and proxy statements sent or made available generally by the Debtor to its respective security holders, and (b) all regular and periodic reports, all registration statements and prospectuses and all other reports, forms and statements filed by the Debtor with any securities exchange or with the Securities and Exchange Commission or any governmental authority succeeding to any of its functions;

(e) Promptly upon receipt thereof, copies of all Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Reports on Form 8-K, final registration statements and final prospectuses, if any, filed by the Debtor with the Securities and Exchange Commission or any governmental authority succeeding to any of its functions;

(f) As soon as possible, notice of the occurrence of a Default or an Event of Default;

(g) Notice of any litigation or proceeding affecting the Debtor which is reasonably likely to be adversely determined and, if adversely determined, would have a material adverse effect on (i) the business, operations or financial condition of the Debtor and its Subsidiaries, taken as a whole or (ii) the Debtor's ability to perform its obligations under the Operative Agreements; and

(h) Such additional information (including financial information) reasonably related to the transactions contemplated hereby as the Indenture Trustee or any Noteholder which is an institutional investor may reasonably request concerning the Debtor.

3.20. Inspection; Books and Records. Upon prior reasonable notice to the Debtor, the Debtor agrees to permit the Indenture Trustee and any Noteholder which is an institutional investor at their sole cost, expense and risk, to examine the books and records of the Debtor with respect to the transactions contemplated hereby and to discuss the Debtor's affairs, finances and accounts with respect to the transactions contemplated hereby with the Debtor's officers, employees and independent public accountants (and by this provision the Debtor authorizes said accountants to discuss such finances, affairs and accounts), subject to the same terms and conditions set forth in Section 3.11 hereof, all at such reasonable times and as often as the Indenture Trustee, or any such party may reasonably desire. Each such party exercising inspection rights shall treat all information obtained as a result of any such inspections or discussions as confidential; provided, however, that such obligation shall not apply to any information which (i) is or becomes available to the public other than as a result of disclosure by such party, (ii) is required to be disclosed under applicable law, government regulation or by an order, decree, judicial process, administrative agency or other government agency, or to the extent required by a government agency, or to the extent required by a government agency in connection with any supervisory examination or any other regulatory procedure; provided that such party shall send a copy of any subpoena or request for production it receives with respect to such information to the Debtor unless prohibited by law, (iii) any Noteholder discloses to any prospective institutional investor transferee, or to the legal counsel or other professional advisor of any prospective institutional investor transferee, in Secured Notes, or (iv) is required to be disclosed to its employees, legal counsel or other independent advisors (including, without limitation, accountants) in connection with the transactions contemplated by the Operative Agreements (but only if such employees, legal counsel or other independent professional advisors shall agree to be bound by the restrictions contained in this Section 3.20.

3.21. Financial Covenants. The Debtor hereby covenants and agrees that so long as this Indenture shall remain in effect:

(a) Financial Covenants. The Debtor and its consolidated Subsidiaries will at all times maintain Tangible Net Worth of at least US\$300,000,000.

(b) Ratio of Senior Debt to Tangible Net Worth. The Debtor and its consolidated Subsidiaries will not permit the ratio of Senior Debt to Tangible Net Worth to exceed 4 to 1.

(c) Subordinated Debt to Tangible Net Worth. The Debtor and its consolidated Subsidiaries will not permit Unsecured Subordinated Debt to exceed Tangible Net Worth.

#### SECTION 4. POSSESSION, USE AND RELEASE OF PROPERTY.

4.1. Possession of Collateral. Unless and until an Event of Default shall have occurred and be continuing hereunder, the Debtor and any lessee of Equipment under an Assigned Lease shall, to the exclusion of the Indenture Trustee, be permitted to remain in full possession, enjoyment and control of the Collateral, including each Assigned Lease, and to manage, operate and use the same and each part thereof with the rights and franchises appertaining thereto; provided, always, that the possession, enjoyment, control and use of the Equipment shall at all times be subject to the observance and performance of the terms of this Indenture.

4.2. Release of Property and Liens. (a) So long as no Event of Default has occurred and is continuing to the knowledge of the Indenture Trustee, the Indenture Trustee shall execute a release in respect of any Unit designated by the Debtor for settlement of the Loan Value pursuant to Section 5 hereof, upon receipt from the Debtor of written notice designating the Unit with respect to such Event of Loss and the receipt from Debtor or such other Person, as the case may be, of all sums payable in compliance with said Section 5. Any such written notice from the Debtor shall be accompanied by an Officer's Certificate of the Debtor setting forth the basis for such request, together with such additional evidence of such compliance as the Indenture Trustee shall reasonably request. The Indenture Trustee agrees at no cost to itself to execute such instruments as the Debtor shall reasonably request to evidence such release and consents to all appropriate filings to confirm such release of public record.

(b) Upon the written request and at the sole cost and expense of the Debtor, the Indenture Trustee shall execute and deliver any and all releases, termination statements and other

agreements and filings as Debtor shall reasonably request to evidence the termination of the Indenture Trustee's security interests in the Unblended Leases and/or the Additional Unblended Leases as set forth in and in accordance with Section 1.4(i) of this Indenture.

4.3. Condemnation. The Debtor, immediately upon obtaining actual knowledge of the institution of any proceedings for the condemnation of any Unit of Equipment, which such condemnation proceedings, if successful, would reasonably be likely to result in an Event of Loss, shall notify the Indenture Trustee of the pendency of such proceedings. The Indenture Trustee, at its own cost and expense, may participate in any such proceedings, and the Debtor from time to time will deliver or cause to be delivered to the Indenture Trustee all instruments requested by it to permit such participation. In the event of such condemnation proceedings, the award or compensation payable to the Debtor shall be paid to the Indenture Trustee, and such award or compensation shall be retained by the Indenture Trustee as part of the Collateral and applied to the prepayment of the principal of the Secured Notes equal to the Loan Value (as defined in Section 5) of such Unit, plus accrued interest thereon, and the balance shall be released to the Debtor. The Indenture Trustee shall be under no obligation to question the amount of the award or compensation and the Indenture Trustee may accept any such award or compensation. In any such compensation proceedings, the Indenture Trustee may be represented by counsel.

4.4. Release of Collateral - Consent of Noteholders. In addition to any release pursuant to Section 1.4(i) and Section 4.2 hereof, the Debtor may sell or otherwise dispose of all or any part of the Collateral then subject to the Lien of this Indenture upon the written consent of all of the Noteholders, and the Indenture Trustee shall release the same from the Lien and security interest hereof, to the extent and on the terms and upon compliance with the conditions provided for in any such written consent given thereto at any time or from time to time by all of the Noteholders.

4.5. Protection of Purchaser. No purchaser in good faith of property purporting to be released hereunder shall be bound to ascertain the authority of the Indenture Trustee to execute the release, or to inquire as to any facts required by the provisions hereof for the exercise of such authority; nor shall any purchaser, in good faith, of any item or unit of the Collateral be under obligation to ascertain or inquire into the conditions upon which any such sale is hereby authorized.

## SECTION 5. EVENT OF LOSS.

In the event that any Unit (a) shall suffer an actual or constructive total loss, (b) shall suffer destruction or damage which, in the Debtor's good faith opinion, makes repair uneconomic or renders such Unit unfit for commercial use, (c) shall have title thereto taken or appropriated by any governmental authority under the power of eminent domain or otherwise, or (d) shall be taken or requisitioned for use by any governmental authority under the power of eminent domain or otherwise for a period extending beyond the earlier of (i) twelve (12) months after the date of such taking or requisition, or (ii) June 26, 2001 (any such occurrence being hereinafter called "Event of Loss"), the Debtor shall promptly and fully inform the Indenture Trustee of such Event of Loss, and shall on the next succeeding date on which interest is due and payable on the Secured Notes pay to the Indenture Trustee, for prepayment of the Notes in accordance with the provisions of Section 6 hereof, an amount equal to the Loan Value of such Unit plus interest accrued and unpaid on the principal balance of the Secured Notes equal to such Loan Value to but not including the date of such prepayment.

For purposes of this Indenture, the "Loan Value" in respect of any Unit shall be an amount equal to the product of (A) a fraction, the numerator of which is an amount equal to the Equipment Cost of such Unit which has suffered an Event of Loss, and the denominator of which is the Total Equipment Cost of all Units then subject to this Indenture times (B) the unpaid principal amount of the Secured Notes immediately prior to the payment provided for in this Section 5.

## SECTION 6. PREPAYMENT OF SECURED NOTES.

6.1. Prepayments. Neither any prepayment of any Secured Note nor any purchase by the Debtor of any Secured Note may be made except to the extent and in the manner expressly permitted by this Indenture. Every prepayment of Secured Notes required to be made pursuant to this Section 6 and any prepayment permitted to be made under Section 7 shall be made in accordance with the provisions of this Section 6.

6.2. Mandatory Prepayments. In the event of an Event of Loss pursuant to the provisions of Section 5 hereof with respect to any Unit, on the next succeeding date on which interest is due and payable on the Secured Notes following the notice of such Event of Loss the Debtor shall prepay and apply, and there shall become due and payable, a principal amount of the Secured Notes equal to the Loan Value of the Units suffering such Event of Loss, and all accrued and unpaid interest thereon, but without premium.

6.3. Refinancing Prepayment. One time on the Conditional Reset Date, the Debtor shall have the option to prepay all but not less than all of the Secured Notes by payment of the unpaid principal thereof, plus all accrued and unpaid interest thereon, together with an amount equal to \$75,000.00 in accordance with Section 6 of the Note Purchase Agreement, but without premium; provided that notice of any such payment shall have been given pursuant to Section 1.4(c) of the Note Purchase Agreement.

6.4. Voluntary Prepayments. On or after June 26, 1995, on any interest payment date, the Debtor shall have the option to prepay all but not less than all of the Secured Notes by payment of the unpaid principal thereof, plus all accrued and unpaid interest thereon, together with an amount equal to the applicable Make-Whole Amount; provided that notice of any such payment shall have been given pursuant to Section 6.5 hereof.

6.5. Notice of Prepayment; Partial Prepayments.

(a) Notice of Prepayment. In the case of any payment which will discharge any indebtedness of the Debtor evidenced by the Secured Notes, notice thereof in writing to the holders of the Secured Notes to be so paid shall be sent by the Indenture Trustee as agent and attorney-in-fact of the Debtor in the manner set forth in Section 10.3, to the holder of each Secured Note to be paid, in the case of any voluntary prepayment pursuant to Section 6.4 at least 60 and not more than 90 days prior to the date fixed for payment, and in the case of any prepayment resulting from an Event of Loss pursuant to Section 6.2 on the date the Indenture Trustee shall have received notice of such prepayment. Such notice shall specify the date fixed for payment, the provision hereof under which such payment is being effected, and on the date fixed for payment there will become due and payable upon each Secured Note or portion thereof so to be paid at the place where the principal of the Secured Notes to be paid is payable, the specified amount of principal thereof, together with the accrued interest to such date, with such premium (including the method used in determining such premium), if any, as is payable thereon.

(b) Allocation of Partial Prepayments. In the event of any partial prepayment of any Secured Notes, the aggregate principal amount of such Secured Notes to be prepaid shall be prorated by the Indenture Trustee among the holders thereof in proportion to the unpaid principal amount of such Secured Notes held by them, and the Indenture Trustee shall apply the proceeds of such partial prepayment first, to the interest due and payable on, second, to any premium due on, and third, to the outstanding principal amount of, such Secured Notes of each such holder to be prepaid.

(c) Deposit of Prepayment Funds. On or prior to the date fixed for any prepayment of Secured Notes the moneys required for such payment shall be deposited with the Indenture Trustee by the Debtor.

## SECTION 7. DEFAULTS AND OTHER PROVISIONS.

7.1. Events of Default. The term "Event of Default" for all purposes of this Indenture shall mean one or more of the following:

(a) Default in payment of an installment of the principal of, premium, if any, or interest on, any Secured Note when and as the same shall become due and payable, whether at the due date thereof or at the date fixed for prepayment or by acceleration or otherwise, and such default shall continue unremedied for five (5) Business Days;

(b) The Debtor shall default in the maintenance of the insurance coverage required by Section 3.09 hereof; provided that no Event of Default shall occur hereunder with respect to any insurance policy until the coverage provided by such policy shall have lapsed;

(c) Default on the part of the Debtor in the due observance or performance of any covenant or agreement to be observed or performed by the Debtor under the Secured Notes, this Indenture or the Note Purchase Agreement, and such default (with the exception of a default by the Debtor under Section 3.21 hereof, for which there shall be no grace period) shall continue unremedied for thirty (30) days after written notice from the Indenture Trustee to the Debtor, specifying the default and demanding the same to be remedied; provided, however, that if such default is not capable of cure during such thirty (30) day period, no Indenture Event of Default shall occur under this paragraph (b) so long as the Debtor is diligently attempting to cure such default, but in no event longer than ninety (90) days;

(d) Any representation or warranty on the part of the Debtor made herein or in the Note Purchase Agreement or in any report, certificate, financial or other statement furnished by the Debtor or in connection with this Indenture or the Note Purchase Agreement, or the transactions contemplated therein, is untrue or incorrect in any material respect as of the date of issuance or making thereof;

(e) Any Lien (other than Permitted Liens) shall be asserted against or levied or imposed upon the Equipment, and such Lien shall not be discharged or removed within thirty (30) days after the same shall have been asserted, levied or imposed;

(f) A final judgment entered against the Debtor for the payment of money in excess of US \$1,000,000 has not been vacated, satisfied or stayed more than thirty (30) days after the date of its entry;

(g) The Debtor (i) shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or (ii) shall consent to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it, or (iii) shall make a general assignment for the benefit of creditors, or (iv) shall fail generally to pay its debts as they become due, or (v) shall take any corporate action to authorize any of the foregoing; or

(h) An involuntary case or other proceeding shall be commenced against the Debtor seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of sixty (60) days.

7.2. Indenture Trustee's Rights. The Debtor agrees that when any Event of Default has occurred and is continuing, the Indenture Trustee shall have the rights, options, duties and remedies of a secured party, and the Debtor shall have the rights and duties of a debtor, under the Uniform Commercial Code of New York, and without limiting the foregoing, the Indenture Trustee may exercise any one or more or all, and in any order, of the remedies hereinafter set forth, it being expressly understood that no remedy herein conferred is intended to be exclusive of any other remedy or remedies, but each and every remedy shall be cumulative and shall be in addition to every other remedy given herein or now or hereafter existing at law or in equity or by statute:

(a) The Indenture Trustee may, and upon the written request of the holders of at least 25% in principal amount of the Secured Notes then outstanding shall, by notice in writing to the Debtor, declare the entire unpaid balance of the Secured Notes to be immediately due and payable, and thereupon all such unpaid balance, together with all accrued interest thereon, shall be and become immediately due and payable;

(b) Subject always to the existing rights, if any, of a lessee under an Assigned Lease, the Indenture Trustee personally or by agents or attorneys, shall have the right (subject to compliance with any applicable mandatory legal requirements) to take immediate possession of the Collateral, or any portion thereof, and for that purpose may pursue the same wherever it may be found, and may enter any of the premises of the Debtor, with or without notice, demand, process of law or other legal procedure, if this can be done without breach of the peace, and search for, take possession of, remove, keep and store the same, or use and operate or lease the same until sold, and to collect and receive all earnings, revenues, rents, issues, proceeds and income of the Collateral and every part thereof, to make alterations, improvements and additions thereon or remove and dispose of any portion of the Collateral and to otherwise exercise any and all of the rights and powers of the Debtor in respect thereof;

(c) Subject always to the existing rights, if any, of a lessee under an Assigned Lease, the Indenture Trustee may, if at the time such action may be lawful and always subject to compliance with any mandatory legal requirements, either with or without taking possession and either before or after taking possession, and without instituting any legal proceedings whatsoever, and having first given notice of any such sale by registered mail to the Debtor at least ten (10) days prior to (i) the date of any public sale or (ii) the date on or after which any private sale may take place, and any other notice which may be required by law, sell and dispose of the Collateral, or any part thereof, at public auction to the highest bidder or at private sale or sales conducted in a commercially reasonable manner, in one lot as an entirety or in separate lots, and either for cash or on credit and on such terms as the Indenture Trustee may determine, and at any place (whether or not it be the location of the Collateral or any part thereof) designated in the notice above referred to. Any such sale or sales may be adjourned from time to time by announcement at the time and place appointed for such sale or sales, or for any such adjourned sale or sales, without further published

notice, and the Indenture Trustee or the holder or holders of the Secured Notes, or of any interest therein, or the Debtor may bid and become the purchaser at any such sale;

(d) Subject always to the existing rights of a lessee under an Assigned Lease, if any, the Indenture Trustee may proceed to protect and enforce this Indenture and the Secured Notes by suit or suits or proceedings in equity, at law or in bankruptcy, and whether for the specific performance of any covenant or agreement herein contained or in execution or aid of any power herein granted; or for foreclosure hereunder, or for the appointment of a receiver or receivers for the Collateral or any part thereof, for the recovery of judgment for the indebtedness hereby secured or for the enforcement of any other proper, legal or equitable remedy available under applicable law; and

(e) Subject always to the existing rights of a lessee under an Assigned Lease, if any, the Indenture Trustee may (i) proceed to exercise all rights, privileges and remedies of the Debtor under any or all of the Assigned Leases to the extent assigned as Collateral pursuant to Section 1.2 hereof and may exercise all such rights and remedies either in the name of the Indenture Trustee or in the name of the Debtor for the use and benefit of the Indenture Trustee and the Noteholders, and/or (ii) substitute itself or any nominee or agent in lieu of the Debtor as party to any Unblended Lease or Additional Unblended Lease and to notify the obligor of any Assigned Lease (Debtor hereby agrees to deliver any such notice at the request of the Indenture Trustee) that all payments and performances under the Assigned Leases to the extent assigned as Collateral pursuant to Section 1.2 hereof shall be made or rendered to the Indenture Trustee or such other Person as it may designate.

7.3. Acceleration Clause. In case of any sale of the Collateral, or of any part thereof, pursuant to any judgment or decree of any court or otherwise in connection with the enforcement of any of the terms of this Indenture, the principal of the Secured Notes, if not previously due, and the interest accrued thereon, shall at once become and be immediately due and payable; also in the case of any such sale, the purchaser or purchasers, for the purpose of making settlement for or payment of the purchase price, shall be entitled to turn in and use the Secured Notes and any claims for interest matured and unpaid thereon, in order that there may be credited as paid on the purchase price the sum apportionable and applicable to the Secured Notes including principal and interest thereof out of the net proceeds of such sale after allowing for the proportion of the total purchase price required to be paid in cash.

7.4. Waiver by Debtor. To the extent permitted by law, the Debtor covenants that it will not at any time insist upon or plead, or in any manner whatever claim or take any benefit or advantage of, any stay or extension law now or at any time hereafter in force, nor claim, take, nor insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Collateral or any part thereof prior to any sale or sales thereof to be made pursuant to any provision herein contained, or pursuant to the decree, judgment or order of any court of competent jurisdiction; nor, after such sale or sales, claim or exercise any right under any statute now or hereafter made or enacted by any state or otherwise to redeem the property so sold or any part thereof, and, to the full extent legally permitted, hereby expressly waives for itself and on behalf of each and every person, except decree or judgment creditors of the Debtor acquiring any interest in or title to the Collateral or any part thereof subsequent to the date of this Indenture, all benefit and advantage of any such law or laws, and covenants that it will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any power herein granted and delegated to the Indenture Trustee, but will suffer and permit the execution of every such power as though no such power, law or laws had been made or enacted.

7.5. Effect of Sale. Any sale, whether under any power of sale hereby given or by virtue of judicial proceedings, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the Debtor in and to the property sold, and shall be a perpetual bar, both at law and in equity, against the Debtor, its successors and assigns, and against any and all Persons claiming the property sold or any part thereof under, by or through the Debtor, its successors or assigns (subject, however, to the then existing rights, if any, of a lessee under any Assigned Lease).

7.6. Application of Proceeds. The purchase money proceeds and/or avails of any sale of the Collateral or any part thereof and the proceeds and the avails of any remedy hereunder shall be paid to and applied as follows:

(a) First, to the payment of costs and expenses of foreclosure or suit, if any, and of such sale, and of all proper expenses, liability and advances, including legal expenses and attorneys' fees, incurred or made hereunder by the Indenture Trustee, or the holder or holders of the Secured Notes and any compensation due and owing to the Indenture Trustee and of all taxes, assessment or Liens superior to the Lien of these presents, except any taxes, assessments or other superior lien subject to which said sale may have been made;

(b) Second, to the payment of the holder or holders of the Secured Notes of the amount then owing or unpaid on the Secured Notes for principal, interest and premium, if any; and in case such proceeds shall be insufficient to pay in full the whole amount so due, owing or unpaid upon the Secured Notes, then ratably according to the aggregate of such principal and the accrued and unpaid interest and premium, if any, with application on each Secured Note to be made, first, to the unpaid interest thereon, second, to unpaid premium, if any, thereon, and third, to unpaid principal thereof; such application to be made upon presentation of the several Secured Notes, and the notation thereon of the payments if partially paid, or the surrender and cancellation thereof, if fully paid; and

(c) Third, to the payment of the surplus, if any, to the Debtor, its successors and assigns, or to whomsoever may be lawfully entitled to receive the same.

7.7. Discontinuance of Remedies. Holders of at least 66-2/3% in aggregate principal amount of the Secured Notes then outstanding, may upon written notice to the Indenture Trustee direct the Indenture Trustee to discontinue any enforcement proceedings commenced by the Indenture Trustee. Without limiting the foregoing, the holders of at least a 66-2/3% in aggregate principal amount of the Secured Notes then outstanding, may upon written notice to the Indenture Trustee (which shall in turn notify the Debtor), rescind any acceleration of the maturity of the Secured Notes, and direct that the payment schedule on the Secured Notes shall be that which existed immediately prior to such acceleration, if (i) all Events of Default, other than the non-payment of any portion of the Secured Notes which has become due and payable solely by reason of the acceleration of the Secured Notes, have been cured or waived, and (ii) the rescission would not conflict with any judgment or decree of a court of competent jurisdiction. In case the Indenture Trustee shall have proceeded to enforce any right under this Indenture by foreclosure, sale, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, then and in every such case the Debtor, the Indenture Trustee and the holder or holders of the Secured Notes shall be restored to their former positions and rights hereunder with respect to the property subject to the security interest created under this Indenture.

7.8. Cumulative Remedies. No delay or omission of the Indenture Trustee or of the holder of any Secured Note to exercise any right or power arising from any Default or Event of Default shall exhaust or impair any such right or power or prevent its exercise during the continuance thereof. No waiver by the Indenture Trustee, or the holder of any Secured Note of any such Default or Event of Default, whether such waiver be full or

partial, shall extend to or be taken to affect any subsequent Default or Event of Default, or to impair the rights resulting therefrom except as may be otherwise provided herein. No remedy hereunder is intended to be exclusive of any other remedy but each and every remedy shall be cumulative and in addition to any and every other remedy given hereunder or otherwise existing; nor shall the giving, taking or enforcement of any other or additional security, collateral or guaranty for the payment of the indebtedness secured under this Indenture operate to prejudice, waive or affect the security of this Indenture or any rights, powers or remedies hereunder, nor shall the Indenture Trustee or holder of any of the Secured Notes be required to first look to, enforce or exhaust such other or additional security, collateral or guaranty.

7.9. Indemnity. The Debtor agrees to indemnify, protect and hold harmless the Indenture Trustee and each Noteholder from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof (except arising from the wilful misconduct or gross negligence of the Indenture Trustee or such Noteholder, as the case may be), and expenses in connection therewith, including, but not limited to, reasonable counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Indenture, the retention by the Indenture Trustee of a security interest in the Collateral, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or repossession of any of the Equipment, any accident, in connection with the operation, use, condition, possession, storage or repossession of any of the Collateral resulting in damage to property or injury or death to any person during the period while a security interest therein remains in the Indenture Trustee or during the period of the transfer of such security interest in the Collateral by the Indenture Trustee pursuant to any of the provisions of this Indenture and all fees, taxes, levies, assessments, charges or withholdings of any nature imposed against the Indenture Trustee or any Noteholder by any federal, state or local government or taxing authority directly relating to the Equipment, the Indenture Trustee's and the Noteholder's interest therein, or any Assigned Lease or use of the Equipment except taxes measured by the income, receipts, capital, purchases, profits or conduct of the business of the Indenture Trustee (other than taxes which are in the nature of sales or use taxes, base taxes or property taxes). This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness hereby secured and the release of the security interest in the Collateral, as provided in Section 1.4 hereof, or the termination of this Indenture in any manner whatsoever.

## SECTION 8. THE INDENTURE TRUSTEE.

The Indenture Trustee accepts the trusts hereunder and agrees to perform the same, but only upon the terms and conditions hereof, including the following, to all of which the Debtor and the respective holders of the Secured Notes at any time outstanding by their acceptance thereof agree:

8.1. Duties of Indenture Trustee. The Indenture Trustee undertakes (i) except while an Event of Default actually known to the Indenture Trustee shall have occurred and be continuing, to perform such duties and only such duties as are specifically set forth in this Indenture, and (ii) while an Event of Default actually known to the Indenture Trustee shall have occurred and be continuing, to exercise such of the rights and powers as are vested in it by this Indenture and to use the same degree of care and skill in their exercise as an ordinary prudent man would exercise or use under the circumstances in the conduct of his own affairs.

The Indenture Trustee upon receipt of instruments furnished to the Indenture Trustee pursuant to the provisions of this Indenture shall examine the same to determine whether or not such instruments conform to the requirements of this Indenture.

8.2. Indenture Trustee's Liability. No provision of this Indenture shall be construed to relieve the Indenture Trustee from liability for its own negligent action, negligent failure to act, or its own willful misconduct, except that:

(a) unless an Event of Default actually known to the Indenture Trustee shall have occurred and be continuing, the Indenture Trustee shall not be liable except for the performance of such duties as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Indenture Trustee but the duties and obligations of the Indenture Trustee shall be determined solely by the express provisions of this Indenture; and

(b) in the absence of bad faith on the part of the Indenture Trustee, the Indenture Trustee may rely upon the authenticity of, and the truth of the statements and the correctness of the opinions expressed in, and shall be protected in acting upon, any resolution, Officer's Certificate, opinion of counsel, request, notice, consent, waiver, order, signature guaranty, notarial seal, stamp, acknowledgment, verification, appraisal, report, stock certificate, or other paper or document believed by the Indenture Trustee to be genuine and to have been signed, affixed or presented by the proper party or parties; and

(c) in the absence of bad faith on the part of the Indenture Trustee, whenever the Indenture Trustee, or any of its agents, representatives, experts or counsel, shall consider it necessary or desirable that any matter be proved or established, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by an Officer's Certificate; provided, however, that the Indenture Trustee, or such agent, representative, expert or counsel, may require such further and additional evidence and make such further investigation as it or they may consider reasonable; and

(d) the Indenture Trustee may consult with counsel and the advice or opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered hereunder in good faith and in accordance with such advice or opinion of counsel; and

(e) the Indenture Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with any direction or request of the required percentage of the holders of the Secured Notes; and

(f) the Indenture Trustee shall not be liable for any error of judgment made in good faith by an officer of the Indenture Trustee unless it shall be proved that the Indenture Trustee was negligent in ascertaining the pertinent facts; and

(g) the Indenture Trustee shall not be deemed to have knowledge of any Default or Event of Default unless and until an officer of the Corporate Trust Division of the Indenture Trustee who customarily handles corporate trusts shall have actual knowledge thereof or the Indenture Trustee shall have received written advice thereof from the holder of any Secured Note or the Debtor; and

(h) whether or not an Event of Default shall have occurred, the Indenture Trustee shall not be under any obligation to take any action under this Indenture which may tend to involve it in any expense or liability the payment of which within a reasonable time is not, in its reasonable opinion, assured to it by the security afforded to it by the terms of this Indenture, unless and until it is requested in writing so to do by one or more holders of Secured Notes outstanding hereunder and furnished, from time to time as it may require, with reasonable security and indemnity; and

(i) whether or not an Event of Default shall have occurred, whenever it is provided in this Indenture that the Indenture Trustee consent to any act or omission by any Person or that the Indenture Trustee exercise its discretion in any manner, the Indenture Trustee shall seek the written acquiescence of all of the Noteholders and, unless written evidence of the acquiescence of the holders of at least 66-2/3% in principal amount of the Secured Notes then outstanding has been received by the Indenture Trustee, it shall be fully justified in refusing so to consent or so to exercise its discretion; provided, however, that holders of at least 66-2/3% in principal amount of the Secured Notes from time to time outstanding shall have the right, upon furnishing to the Indenture Trustee such indemnification as the Indenture Trustee shall reasonably request, by an instrument in writing delivered to the Indenture Trustee, to determine which of the remedies herein set forth shall be adopted and to direct the time, method and place of conducting all proceedings to be taken under the provisions of this Indenture for the enforcement thereof or of the Secured Notes; provided, however, that the Indenture Trustee shall have the right to decline to follow any such direction if the Indenture Trustee shall be advised by counsel that the action or proceedings so directed may not lawfully be taken or would be unjustly prejudicial to holders of Secured Notes not parties to such direction.

8.3. No Responsibility of Indenture Trustee for Recitals. The recitals and statements contained herein and in the Secured Notes (except for the Indenture Trustee's certificate of authentication endorsed on the Secured Notes) shall be taken as the recitals and statements of the Debtor, and the Indenture Trustee assumes no responsibility for the correctness of the same, nor shall the Indenture Trustee have any responsibility for or any liability with respect to any disclosure, warranty, representation or concealment or failure to disclose in connection with the offering, solicitation, sale or distribution of the Secured Notes by the Debtor or by any other Person.

The Indenture Trustee makes no representation as to the validity or sufficiency of this Indenture, or of the Secured Notes secured hereby, the security hereby or thereby afforded, the title of the Debtor to the Collateral or the descriptions thereof, or the filing or recording or registering of this Indenture or any other document.

The Indenture Trustee shall not be concerned with or accountable to any Person for the use or application of any deposited moneys which shall be released or withdrawn in accordance with the provisions of this Indenture or of any

property or securities or the proceeds thereof which shall be released from the lien hereof in accordance with the provisions of this Indenture.

8.4. Certain Limitations on Indenture Trustee's Rights to Compensation and Indemnification. Except to the extent otherwise expressly provided in the Operative Agreements, the Indenture Trustee shall have no right against the holder of any Secured Note for the payment of compensation for its services hereunder or any expenses or disbursement incurred in connection with the exercise and performance of its powers and duties hereunder or any indemnification against liabilities which it may incur in the exercise and performance of such powers and duties but on the contrary, shall look solely to the Debtor under Section 7.9 of this Indenture for such payment and indemnification, and it shall have no lien on or security interest in the Collateral as security for such compensation, expenses, disbursements and indemnification except to the extent provided for in Section 7.6.

8.5. Status of Moneys Received. All moneys received by the Indenture Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys, except to the extent required by law, and may be deposited by the Indenture Trustee under such general conditions as may be prescribed by law in the Indenture Trustee's general banking department, and the Indenture Trustee shall be under no liability for interest on any moneys received by it hereunder. The Indenture Trustee and any affiliated corporation may not become the owner of any Secured Note secured hereby. The Indenture Trustee and any affiliated corporation may be interested in any other financial transaction with the Debtor or any affiliated corporation, or the Indenture Trustee may act as depositary or otherwise in respect to other Securities of the Debtor or any affiliated corporation, all with the same rights which it would have if not the Indenture Trustee.

8.6. Resignation of Indenture Trustee. The Indenture Trustee may resign and be discharged from the trusts created hereby by delivering notice thereof pursuant to Section 10.3 to the Debtor and all holders of the Secured Notes at the time outstanding, specifying a date (not earlier than sixty (60) days after the date of such notice) when such resignation shall take effect.

Such resignation shall take effect on the day specified in such notice, unless previously a successor Indenture Trustee shall have been appointed as provided in Sections 8.8 and 8.9 in which event such resignation shall take effect immediately upon the appointment of such successor Indenture Trustee; provided, however, that no such resignation shall be effective hereunder

unless and until a successor Indenture Trustee shall have been appointed and shall have accepted such appointment as provided in Sections 8.8 and 8.9.

8.7. Removal of Indenture Trustee. The Indenture Trustee may be removed at any time, for or without cause, by an instrument or instruments in writing executed by the holders of a majority in aggregate principal amount of the Secured Notes (other than the Indenture Trustee) at the time outstanding and delivered to the Indenture Trustee with a copy to the Debtor, specifying the removal and the date when it shall take effect; provided, however, that no such removal shall be effective hereunder unless and until a successor trustee shall have been appointed and shall have accepted such appointment as provided in Sections 8.8 and 8.9.

8.8. Appointment of Successor Indenture Trustee. In case at any time the Indenture Trustee shall resign or be removed or become incapable of acting, a successor Indenture Trustee may be appointed by the holders of a majority in aggregate principal amount of the Secured Notes (other than the Indenture Trustee) at the time outstanding, by an instrument or instruments in writing executed by such Noteholders and filed with such successor Indenture Trustee and the Debtor; provided that, so long as no Indenture Event of Default has occurred and is continuing, such appointment of a successor Indenture Trustee shall be subject to the prior written approval of the Debtor, which approval shall not be unreasonably withheld.

Until a successor Indenture Trustee shall be so appointed by the Noteholders, the Debtor shall appoint a successor Indenture Trustee to fill such vacancy, by an instrument in writing executed by the Debtor and delivered to the successor Indenture Trustee. If all or substantially all of the Collateral shall be in the possession of one or more receivers, trustees, custodians, liquidators or assignees for the benefit of creditors, then such receivers, trustees, custodians, liquidators or assignees may, by an instrument in writing delivered to the successor Indenture Trustee, appoint a successor Indenture Trustee. Promptly after any such appointment, the Debtor, or any such receivers, trustees, custodians, liquidators or assignees, as the case may be, shall give notice thereof pursuant to Section 10.3 to each holder of the Secured Notes at the time outstanding.

Any successor Indenture Trustee so appointed by the Debtor, or such receivers, trustees, custodians, liquidators or assignees, shall immediately and without further act be superseded by a successor Indenture Trustee appointed by the holders of a majority in aggregate principal amount of the Secured Notes (other than the Indenture Trustee) then outstanding.

If a successor Indenture Trustee shall not be appointed pursuant to this Section 8.8 within sixty (60) days after the resignation or removal of the retiring Indenture Trustee, the holder of any Secured Note (other than the retiring Indenture Trustee) or such retiring Indenture Trustee (unless the retiring Indenture Trustee is being removed) may apply to any court of competent jurisdiction to appoint a successor Indenture Trustee, and such court may thereupon, after such notice, if any, as it may consider proper, appoint a successor Indenture Trustee.

8.9. Succession of Successor Indenture Trustee. Any successor Indenture Trustee appointed hereunder shall execute, acknowledge and deliver to the Debtor and the predecessor Indenture Trustee an instrument accepting such appointment, and thereupon such successor Indenture Trustee, without any further act, deed, conveyance or transfer, shall become vested with the title to the Collateral, and with all the rights, powers, trusts, duties and obligations of the predecessor Indenture Trustee in the trust hereunder, with like effect as if originally named as Indenture Trustee herein.

Upon the request of any such successor Indenture Trustee, however, the Debtor and the predecessor Indenture Trustee shall execute and deliver such instruments of conveyance and further assurance and do such other things as may reasonably be required for more fully and certainly vesting and confirming in such successor Indenture Trustee its interest in the Collateral and all such rights, powers, trusts, duties and obligations of the predecessor Indenture Trustee hereunder, with like effect as if originally named as Indenture Trustee herein.

Upon the request of any such successor Indenture Trustee, however, the Debtor and the predecessor Indenture Trustee shall execute and deliver such instruments of conveyance and further assurance and do such other things as may reasonably be required for more fully and certainly vesting and confirming in such successor Indenture Trustee its interest in the Collateral and all such rights, powers, trusts, duties and obligations of the predecessor Indenture Trustee hereunder, and the predecessor Indenture Trustee shall also assign and deliver to the successor Indenture Trustee any property subject to the lien of this Indenture which may then be in its possession.

8.10. Eligibility of Indenture Trustee. The Indenture Trustee shall be a state or national bank or trust company in good standing, organized under the laws of the United States of America or of any State and having a capital, surplus and undivided profits aggregating at least \$100,000,000, if there be such a bank or trust company willing and able to accept such trust upon reasonable and customary terms.

In case the Indenture Trustee shall cease to be eligible in accordance with the provisions of this Section, the Indenture Trustee shall resign immediately in the manner and with the effect specified in Section 8.6.

8.11. Successor Indenture Trustee by Merger. Any corporation into which the Indenture Trustee may be merged or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which the Indenture Trustee shall be a party, or any state or national bank or trust company in any manner succeeding to the corporate trust business of the Indenture Trustee as a whole or substantially as a whole, if eligible as provided in Section 8.10, shall be the successor of the Indenture Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything to the contrary contained herein notwithstanding.

8.12. Co-Trustees. At any time, for the purpose of meeting any legal requirements of any jurisdiction in which any part of the Collateral may at the time be located, the Debtor and the Indenture Trustee jointly shall have power and shall execute and deliver all instruments, to appoint one or more Persons approved by the Indenture Trustee, to act as co-trustee, or co-trustees, jointly with the Indenture Trustee, or separate trustee or separate trustees, of all or any part of the Collateral, and to vest in such Person or Persons in such capacity, such interest in the Collateral or any part thereof, and such rights, powers, duties, trusts or obligations as the Debtor and the Indenture Trustee may consider necessary or desirable. If the Debtor shall not have joined in such appointment within fifteen (15) days after the receipt by it of a request so to do, or in case an Indenture Event of Default shall have occurred and be continuing, the Indenture Trustee alone shall have power to make such appointment.

## SECTION 9. SUPPLEMENTS; WAIVERS.

9.1. Supplemental Indentures Without Noteholders' Consent. The Debtor and the Indenture Trustee from time to time and at any time, subject to the restrictions in this Indenture contained, may, without the Noteholders' consent, enter into an agreement or agreements supplemental hereto, which thereafter shall form a part hereof, for any one or more or all of the following purposes:

(a) to add to the covenants and agreements to be observed by, and to surrender any right or power reserved to or conferred upon the Debtor;

(b) to subject to the Lien of this Indenture additional property hereafter acquired by the Debtor and intended to be subjected to the Lien of this Indenture

and to correct and amplify the description of the Collateral;

(c) to permit the qualification of this Indenture under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect, except that nothing herein contained shall permit or authorize the inclusion of the provisions referred to in Section 316(a)(2) of said Trust Indenture Act of 1939 or any responding provision in any similar federal statute hereafter in effect; and

(d) for any other purpose not inconsistent with the terms of this Indenture or to cure any ambiguity or cure, correct or supplement any defect or inconsistent provisions of this Indenture or any supplement and the covenants to perform all requirements of any such supplemental agreement.

No restriction or obligation imposed upon the Debtor may, except as otherwise provided in this Indenture, be waived or modified by any such supplemental agreement.

9.2. Waivers and Consents by Noteholders; Supplemental Indentures with Noteholders' Consent. Upon the waiver or consent of the holders of at least a majority in aggregate principal amount of the Secured Notes then outstanding (x) the Indenture Trustee may take any action prohibited, or omit the taking of any action required, by any of the provisions of this Indenture or the Note Purchase Agreement or any agreement supplemental hereto or thereto, or (y) the Debtor and the Indenture Trustee may enter into an agreement or agreements supplemental hereto or to the Note Purchase Agreement for the purpose of adding, changing or eliminating any provisions of this Indenture or the Note Purchase Agreement or of any agreement supplemental hereto or thereto or modifying in any manner the rights and obligations of the holders of the Secured Notes and the Debtor; provided, however, that no such waiver or supplemental agreement shall (i) impair or affect the right of any holder to receive payments or prepayments of the principal of and payments of the interest and premium on its Secured Note, as therein and herein provided, without the consent of such holder; (ii) permit the creation of any Lien or security interest with respect to any of the Collateral, without the consent of the holders of all Secured Notes at the time outstanding; (iii) effect the deprivation of the holder of any Secured Note of the benefit of the Lien and security interest of this Indenture upon all or any part of the Collateral without the consent of such holder; (iv) reduce the aforesaid percentage of the aggregate principal amount of Secured Notes, the holders of which are required to consent to any such waiver or supplemental agreement pursuant to this Section 9.2, without the consent of the holders of all of the Secured Notes at the time outstanding; or

(v) modify the rights, duties or immunities of the Indenture Trustee, without the consent of the Indenture Trustee and of the holders of all of the Secured Notes at the time outstanding. The Debtor shall not pay or cause to be paid to any Noteholder any remuneration for or in connection with such Noteholder's consent to any waiver or consent unless each Noteholder is paid remuneration in a ratable amount (based on the proportion which the principal balance of such Noteholder's Secured Note bears to the principal balance of all of the Secured Notes).

9.3. Notice of Supplemental Indentures. Promptly after the execution by the Debtor and the Indenture Trustee of any waiver, consent or supplemental agreement pursuant to the provisions of Sections 9.1 or 9.2, the Indenture Trustee shall give written notice, setting forth in general terms the substance of such waiver, consent or supplemental agreement, together with a conformed copy thereof, mailed, first-class, postage prepaid, to each holder of the Secured Notes. Any failure of the Indenture Trustee to give such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such waiver, consent or supplemental agreement.

9.4. Opinion of Counsel Conclusive as to Supplemental Indenture. The Indenture Trustee is hereby authorized to join with the Debtor in the execution of any such supplemental agreement authorized or permitted by the terms of this Indenture and to make the further agreements and stipulations which may be therein contained, and the Indenture Trustee may receive an opinion of counsel as conclusive evidence that any supplemental agreement executed pursuant to the provisions of this Section 9 complies with the requirements of this Section 9.

## SECTION 10. MISCELLANEOUS.

10.1. Successors and Assigns. Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and permitted assigns of such party; and all the covenants, promises and agreements in this Indenture contained by or on behalf of the Debtor or by or on behalf of the Indenture Trustee, shall bind and inure to the benefit of the respective successors and assigns of such parties whether so expressed or not.

10.2. Severability. Any provision of this Indenture which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

10.3 Communications. All communications provided for herein shall be in writing or by a telecommunications device capable of creating a written record, and any such notice shall become effective (a) upon personal delivery thereof, including, without limitation, by overnight mail and courier service, (b) five (5) days after the date on which it shall have been mailed by United States mail, certified or registered, postage prepaid, return receipt requested, or, (c) in the case of notice by such a telecommunications device, when a written acknowledgement as to the receipt thereof by the transmittee has been received by the sender, addressed to each party at the following addresses:

If to the Debtor:

Itel Rail Corporation  
55 Francisco Street  
San Francisco, California 94133  
Attention: Robert C. Kiehnle  
Vice President-Finance  
Fax No.: (415) 781-1035  
Confirmation No.: (415) 984-4000

with a copy to:

Skadden, Arps, Slate,  
Meagher & Flom  
919 Third Avenue  
New York, New York 10022  
Attention: Eduardo R. Vidal  
Fax No.: (212) 735-2000  
Confirmation No.: (212) 735-3000

If to the Indenture Trustee:

Continental Bank, National Association  
231 South LaSalle Street  
7th Floor  
Chicago, Illinois 60697  
Attention: Corporate Trust Division  
Itel Rail Account Administration  
Fax No.: (312) 828-6052  
Confirmation No.: (312) 828-2953

If to the holders of Secured Notes:

At their addresses for notices  
set forth in the Register

or to any such party at such other address as such party may designate by notice duly given in accordance with this Section to the other parties.

10.4. Release. The Indenture Trustee shall release this Indenture and the security interest granted hereby by proper instrument or instruments upon presentation of satisfactory evidence that all indebtedness hereby secured has been fully paid or discharged.

10.5. Business Day. Notwithstanding anything herein or in any other Operative Agreement to the contrary, if the date on which any payment is to be made pursuant to this Indenture is not a Business Day, the payment otherwise payable on such date shall be payable on the next succeeding Business Day.

10.6. Governing Law. This Indenture and the Secured Notes shall be construed in accordance with and governed by the internal laws and decisions (as opposed to conflicts of law provisions) of the State of New York; provided, however, that the Indenture Trustee shall be entitled to all the rights conferred by any applicable federal statute, rule or regulation.

10.7. Indenture Trustee and Noteholder's Right to Perform. If the Debtor fails to make any payment required to be made by it hereunder or fails to perform or comply with any of its other agreements contained herein, the Indenture Trustee or any Noteholder may, after giving not less than five (5) Business Days' prior notice thereof to the Debtor, itself make such payment or perform or comply with such agreement in a reasonable manner, but shall not be obligated hereunder to do so, and the amount of such payment and of the reasonable expenses of any such party incurred in connection with such payment or the performance of or compliance with such agreement, as the case may be, together with interest thereon at the Late Rate, to the extent permitted by applicable law, shall be payable by the Debtor to such party on demand; provided that if an Event of Default shall have occurred and be continuing, no obligation to give such notice is required to be given pursuant to this Section.

10.8. Counterparts. This Indenture may be executed, acknowledged and delivered in any number of counterparts, each of such counterparts constituting an original but all together only one Indenture.

10.9. Headings. Any headings or captions preceding the text of the several sections hereof are intended solely for convenience of reference and shall not constitute a part of this Indenture nor shall they affect its meaning, construction or effect.

IN WITNESS WHEREOF, the Debtor and the Indenture Trustee  
have caused this Indenture to be executed, as of the day and year  
first above written.

ITEL RAIL CORPORATION

By *Robert K. Kelly*  
Its: Vice President-Finance and Treasurer

AS DEBTOR

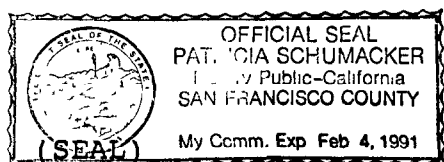
CONTINENTAL BANK, NATIONAL ASSOCIATION

By *Robert J. ...*  
Its: *VICE PRESIDENT*

AS INDENTURE TRUSTEE

STATE OF CALIFORNIA       )  
                                      ) SS  
COUNTY OF SAN FRANCISCO )

On this 22 day of December, 1989, before me personally appeared Robert C. Kiehnle to me personally known, who being by me duly sworn, says that he is a Vice President of ITEL RAIL CORPORATION, that said instrument was signed and sealed on December 22, 1989 on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Patricia Schumacker  
Notary Public

My commission expires: February 4, 1991

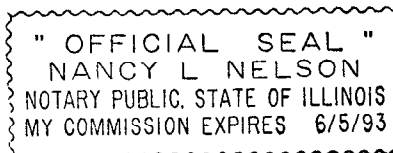
STATE OF ILLINOIS       )  
                                      ) SS  
COUNTY OF COOK        )

On this 27th day of December, 1989, before me personally appeared ROBERT DONAHUE, to me personally known, who being by me duly sworn, says that he is a VICE PRESIDENT of CONTINENTAL BANK, NATIONAL ASSOCIATION, that said instrument was signed and sealed on December 27, 1989 on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Nancy L. Nelson  
Notary Public

(SEAL)

My commission expires:



ITEL RAIL CORPORATION

Secured Note

NO. R- \_\_\_\_\_, 1989

\$ \_\_\_\_\_

FOR VALUE RECEIVED, the undersigned, ITEL RAIL CORPORATION, promises to pay to

[Name of Note Purchaser]

or registered assigns,  
the principal sum of

and to pay interest accrued and unpaid from the date hereof until maturity (computed on the basis of a 360-day year of 12 consecutive 30-day months for the actual number of days elapsed) on the unpaid principal balance hereof, in twenty-three (23) consecutive semi-annual installments, commencing on June 26, 1990 and continuing on each December 26th and June 26th thereafter to and including June 26, 2001. Interest accrued and payable on this Note shall be computed at the Coupon Rate; provided, however, that any amount of principal hereunder not paid when due (whether at stated maturity, by acceleration or otherwise), and to the extent permitted by law, overdue interest, shall bear interest from the due date until such amount is paid in full at the rate of 2% per annum over the Coupon Rate (computed on the same basis).

The principal indebtedness evidenced hereby shall be payable in accordance with the amortization schedule set forth in Schedule 1 attached hereto.

This Secured Note is one of the Secured Notes of the Debtor not exceeding \$19,224,800.00 in aggregate principal amount (the "Secured Notes") which are equally and ratably with said other Secured Notes secured by that certain Security Agreement and Trust Indenture, dated as of December 14, 1989 (the "Indenture") from the Debtor to Continental Bank, National Association, as indenture trustee (the "Indenture Trustee"). Capitalized terms used herein and not otherwise defined herein shall have the meaning assigned to such terms in the Indenture. Reference is made to the Indenture and all supplements and amendments thereto executed pursuant to the Indenture for a description of the Collateral, and the nature and extent of the security and rights of the Indenture Trustee, the holder or holders of the Secured Notes and of the Debtor in respect thereof.

EXHIBIT A  
(to Security Agreement and Trust Indenture)

Both the principal hereof and interest hereon are payable in coin or currency of the United States of America which at the time of payment shall be legal tender for the payment of public and private debts. If the date on which any payment on this Secured Note is to be made is not a Business Day, the payment otherwise payable on such date shall be payable on the immediately succeeding Business Day.

This Secured Note may not be prepaid by the Debtor except upon the terms and subject to the conditions set forth in the Indenture. The terms and provisions of the Indenture and the rights and obligations of the Indenture Trustee and the rights of the holders of the Secured Notes may be changed and modified to the extent permitted by and as provided in the Indenture.

On and subject to the conditions contained in the Indenture, this Secured Note is transferable by the registered holder hereof in person or by its duly authorized attorney on the Register to be kept at the principal corporate trust office of the Indenture Trustee. On and subject to the conditions contained in the Indenture, this Secured Note is exchangeable for Secured Notes of other denominations. The Debtor and the Indenture Trustee may deem and treat the person in whose name a Secured Note is registered on said Register as the absolute owner and holder hereof (whether or not this Secured Note shall be overdue) for the purpose of receiving payment and for all other purposes, and neither the Debtor nor the Indenture Trustee shall be affected by any notice to the contrary.

Presentment, protest and notice of nonpayment and protest are hereby waived by the Debtor.

This Secured Note and the Indenture are governed by and construed in accordance with the internal laws and decisions (as opposed to conflicts of law provisions) of the State of New York.

IN WITNESS WHEREOF, the Debtor has caused this Secured Note to be duly executed.

ITEL RAIL CORPORATION

By \_\_\_\_\_  
Its: \_\_\_\_\_

NOTICE

THIS SECURED NOTE HAS NOT BEEN REGISTERED PURSUANT TO THE SECURITIES ACT OF 1933 OR UNDER THE SECURITIES LAWS OF ANY STATE. THIS SECURED NOTE MAY NOT BE OFFERED OR SOLD UNLESS IT IS REGISTERED UNDER THE APPLICABLE SECURITIES LAWS OR UNLESS AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE.

AUTHENTICATION CERTIFICATE

This Secured Note is one of the Secured Notes described in the within-mentioned Indenture.

CONTINENTAL BANK, NATIONAL ASSOCIATION

By \_\_\_\_\_  
Its \_\_\_\_\_

SECURITY AGREEMENT AND TRUST INDENTURE  
SUPPLEMENT NO. 1

SECURITY AGREEMENT AND TRUST INDENTURE SUPPLEMENT NO. 1 (this "Indenture Supplement") dated December \_\_\_, 1989, between ITEL RAIL CORPORATION, a Delaware corporation, as Debtor (the "Debtor") and CONTINENTAL BANK, NATIONAL ASSOCIATION, a national banking association (the "Indenture Trustee").

W I T N E S S E T H:

The Security Agreement and Trust Indenture dated as of December 14, 1989 (herein called the "Indenture") from the Debtor to the Indenture Trustee, provides for the execution and delivery of an Indenture Supplement thereto substantially in the form hereof, which shall particularly describe the Equipment and the Assigned Leases (such terms and other defined terms in the Indenture being herein used with the same meanings) and shall specifically grant a security interest in such Equipment and in such Assigned Leases;

The Debtor in consideration of the premises and other good and valuable consideration, receipt whereof is hereby acknowledged, and intending to be legally bound, and in order to secure the equal and pro rata payment of both the principal of and interest and premium, if any, upon all Secured Notes at any time outstanding under the Indenture according to their tenor and effect, and to secure the payment of all other Secured Indebtedness and the performance and observance of all the covenants and conditions contained in the Secured Notes, the Indenture and the Note Purchase Agreement, does hereby convey, warrant, mortgage, assign, pledge and grant unto the Indenture Trustee, its successors in trust and assigns, forever, for the ratable use and benefit of the holders of the Secured Notes, a security interest in, all right, title and interest of the Debtor in: (i) the Equipment described in Schedule 1 hereto; together with (1) all accessories, equipment, parts and appurtenances appertaining or attached to any of the Equipment hereinabove described, whether now owned or hereafter acquired, (2) all substitutions, renewals or replacements of and additions, improvements, accessions and accumulations to any and all of said Equipment and (3) all proceeds, including but not limited to, all insurance proceeds related thereto; (ii) subject to Sections 1.2(c) and 1.4(i) of the Indenture, all right, title and interest of the Debtor in and to each lease agreement described in Schedule 2 hereto (the "Unblended Leases"), and in and to each and every other lease agreement hereafter entered into by the Debtor as lessor relating solely to the Equipment, or which may hereinafter be amended, supplemented or modified to relate solely to the Equipment (and, in either case, not having subject thereto any other rolling

stock) (the "Additional Unblended Leases"), including but not limited to: (1) all payments due and to become due under any Unblended Lease, whether as contractual obligations, damages or otherwise; (2) all of its claims, rights, powers, or privileges and remedies under any Unblended Lease and Additional Unblended Lease insofar as such rights relate to the Equipment and, to the extent permitted by a lessee under any Unblended Lease or Additional Unblended Lease, the right to cure a default by the Debtor under any Unblended Lease or Additional Unblended Lease; (3) the right to hold the signed copies of the Unblended Leases and the Additional Unblended Leases; (4) all of its rights under any Unblended Lease or Additional Unblended Lease to make determinations, to exercise any election (including, but not limited to, election of remedies) or option or to give or receive any notice, consent, waiver or approval together with full power and authority with respect to any Unblended Lease or Additional Unblended Lease to demand, receive, enforce, collect or give receipt for any of the foregoing rights or any property the subject of any of the Unblended Leases or Additional Unblended Leases, to enforce or execute any checks, or other instruments or orders, to file any claims and to take any action which (in the opinion of the Indenture Trustee) may be necessary or advisable in connection with any of the foregoing insofar, but only insofar, as such rights relate to the Equipment which is subject to such Unblended Leases and Additional Unblended Leases, together with all extensions, renewals and replacements of such Unblended Leases and Additional Unblended Leases, whether now owned or hereafter acquired, and all income, profits and avails therefrom, all rights thereunder and all proceeds thereof (insofar as the same relate to or are derived from the Equipment which is subject to such Unblended Leases and Additional Unblended Leases); (1) subject to Section 1.2(c) of the Indenture, (iii) all title and interest of the Debtor to all payments due or to become due with respect to Equipment whether as contractual obligations, damages or otherwise, under each lease agreement described in Schedule 3 hereto and (2) all right, title and interest of the Debtor to all payments due or to become due with respect to Equipment, whether as contractual obligations, damages or otherwise, under all other lease agreements hereafter entered into by the Debtor as lessor and which does not constitute an Unblended Lease or an Additional Unblended Lease; and (iv) all right, title, interest, claims and demands of the Debtor in, to and under any and all contracts and agreements (other than the Assigned Leases) relating to the Equipment or any rights or interests therein to which the Debtor is now or may hereafter be a party to the extent that the foregoing relate to the Equipment (collectively, the "Assigned Agreements"), together with all rights, powers, privileges, license, easements, options and other benefits of the Debtor under each thereof, including, without limitation, the right to make all waivers and agreements, to give and receive all notices and other instruments or communications, to take such action upon the occurrence of a default thereunder, including the commencement,

conduct and consummation of legal, administrative or other proceedings, as shall be permitted thereby or by law, and to do any and all other things which the Debtor is or may be entitled to do thereunder (collectively, the "Future Collateral"); provided however that the grant of a security interest under this clause (iv) shall not attach or become effective until the earlier to occur of July 15, 1991 or the payment in full of the Medium Term Notes (the "Trigger Date") and no such Future Collateral shall constitute Collateral until the Trigger Date.

TO HAVE AND TO HOLD the aforesaid property unto the Indenture Trustee, its successors and assigns forever, upon the terms and conditions set forth in the Indenture for the equal and proportionate benefit, security and protection of all present and future holders of the Secured Notes.

This Indenture Supplement shall be construed in connection with and as part of the Indenture and all terms, conditions and covenants contained in the Indenture, except as herein modified, shall be and remain in full force and effect.

Any and all notices, requests, certificates and other instruments executed and delivered after the execution and delivery of this Indenture Supplement may refer to the "Security Agreement and Trust Indenture dated as of December 14, 1989" or the "Indenture" without making specific reference to this Indenture Supplement, but nevertheless all such references shall be deemed to include this Indenture Supplement unless the context shall otherwise require.

Section 1.1. Counterparts. This Indenture Supplement may be executed and delivered in any number of counterparts, each of such counterparts constituting an original but all together only one Indenture Supplement.

Section 1.2. Governing Law. This Indenture Supplement shall be construed in accordance with and governed by the internal laws and decisions (as opposed to conflict of law provisions) of the State of New York.

Section 1.3. Headings. Any headings or captions preceding the text of the several sections hereof are intended solely for convenience of reference and shall not constitute a part of this Indenture Supplement nor shall they affect its meaning, construction or effect.

IN WITNESS WHEREOF, the Debtor has caused this Indenture Supplement to be executed, and the Indenture Trustee in evidence of its acceptance of the trusts hereby created, has caused this Indenture Supplement to be executed on its behalf by one of its duly authorized officers.

ITEL RAIL CORPORATION

By \_\_\_\_\_  
Its: \_\_\_\_\_

AS DEBTOR

CONTINENTAL BANK, NATIONAL ASSOCIATION

By \_\_\_\_\_  
Its: \_\_\_\_\_

AS INDENTURE TRUSTEE

STATE OF CALIFORNIA       )  
                                  ) SS  
COUNTY OF SAN FRANCISCO )

On this \_\_\_\_ day of December, 1989, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is a \_\_\_\_\_ of ITEL RAIL CORPORATION, that said instrument was signed and sealed on December \_\_\_\_, 1989 on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

(SEAL)

My commission expires:

STATE OF ILLINOIS       )  
                                  ) SS  
COUNTY OF COOK        )

On this \_\_\_\_ day of December, 1989, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is a \_\_\_\_\_ of CONTINENTAL BANK, NATIONAL ASSOCIATION, that said instrument was signed and sealed on December \_\_\_\_, 1989 on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

(SEAL)

My commission expires:

## ANNEX I

### DEFINITIONS

#### General Provisions

The following terms shall have the following meanings for all purposes of the Operative Agreements referred to below, unless otherwise defined in an Operative Agreement or the context thereof shall otherwise require. In the case of any conflict between the provisions of this Definition Annex and the provisions of the main body of any Operative Agreement, the provisions of the main body of such Operative Agreement shall control the construction of such Operative Agreement.

Unless the context otherwise requires, (i) references to agreements shall be deemed to mean and include such agreements as the same may be amended, supplemented and otherwise modified from time to time, and (ii) references to parties to agreements shall be deemed to include the successors and permitted assigns of such parties.

Where the character or amount of any asset or liability or item of income or expense is required to be determined or any consolidation or other accounting computation is required to be made for the purposes of the Operative Agreements, this shall be done in accordance with generally accepted accounting principles at the time in effect, to the extent applicable, except where such principles are inconsistent with the requirements of any Operative Agreement.

#### Defined Terms

"Additional Blended Leases" shall have the meaning specified in Section 1.2(a) or the Indenture.

"Additional Blended Lease Payment Rights" shall have the meaning specified in Section 1.2(b) of the Indenture.

"Additional Unblended Leases" shall have the meaning specified in Section 1.2(a) of the Indenture.

"Affiliate" of any Person shall mean any other Person which directly or indirectly controls, or is controlled by, or is

under a common control with, such Person. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Alternative Rate" shall have the meaning specified in Section 1.4 of the Note Purchase Agreement.

"Alternative Reset Date" shall have the meaning specified in Section 1.4 of the Note Purchase Agreement.

"Assigned Leases" shall mean collectively the Unblended Leases, the Additional Unblended Leases, the Blended Leases and the Additional Blended Leases.

"Bank Financing" shall have the meaning specified in the CIT Supplemental Commitment Letter.

"Bankruptcy Code" shall mean the United States Bankruptcy Reform Act of 1978, as amended from time to time, 11 U.S.C. § 101 et seq.

"Blended Leases" shall have the meaning specified in Section 1.2(b) of the Indenture.

"Blended Lease Payment Rights" shall have the meaning specified in Section 1.2(b) of the Indenture.

"Borrower" shall mean ITEL Rail Corporation, a Delaware corporation, and any corporation which succeeds thereto by merger or consolidation or which acquires all or substantially all of the assets thereto or otherwise.

"Business Day" shall mean any day other than a Saturday, Sunday or day on which banks in the States of Illinois, New York or California are authorized or permitted to be closed.

"CIT Supplemental Commitment Letter" shall mean the letter agreement dated November 22, 1989 from The CIT Group/Equipment Financing, Inc. to the Debtor.

"Closing Date" shall have the meaning specified in Section 1.2 of the Note Purchase Agreement.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

"Collateral" shall have the meaning specified in Section 1 of the Indenture.

"Conditional Reset Date" shall have the meaning specified in Section 1.4 of the Note Purchase Agreement.

"Conditional Reset Rate" shall mean the average of the seven year and ten year U.S. Treasury Bond yield to maturity plus 2.75% as set forth five (5) days prior to the Conditional Reset Date.

"Coupon Rate" shall mean, with respect to any Secured Note, the Floating Rate, an Optional Fixed Rate, the Mandatory Fixed Rate, the Conditional Reset Rate or the Alternative Reset Rate, as determined in accordance with Section 1.2(d) of the Note Purchase Agreement.

"Debtor" shall mean the Borrower.

"Default" shall mean an Event of Default or an event which with notice or lapse of time or both would become an Event of Default.

"Equipment" shall mean collectively those items of railroad rolling stock described in the Indenture Supplement, together with any and all accessions, additions, improvements and replacements from time to time incorporated or installed on any item thereof which are the property of the Debtor, and "Unit" shall mean individually the various items thereof.

"Equipment Cost" the amount agreed upon by the Note Purchaser and the Borrower as the equipment cost for each Unit as set forth in Schedule 1 to the Indenture Supplement.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, or any successor law.

"Event of Default" shall have the meaning specified in Section 7.1 of the Indenture.

"Event of Loss" shall have the meaning specified in Section 5 of the Indenture.

"Floating Rate" shall mean the rate of interest publicly announced by Manufacturers Hanover Trust Company in New York, New York from time to time as its reference rate plus 1.0%.

"Foreign Person" shall mean any Person who, for United States Federal income tax purposes, is a foreign corporation, a nonresident alien individual, a nonresident alien fiduciary of a foreign estate or trust, or a foreign partnership one or more members of which is, for United States Federal income tax

purposes, a foreign corporation, a nonresident alien individual or a nonresident alien fiduciary of a foreign estate or trust.

"Indenture" shall mean the Security Agreement and Trust Indenture dated as of December 14, 1989 between the Debtor, as debtor, and the Indenture Trustee, as secured party, as amended, supplemented or otherwise modified from time to time.

"Indenture Supplement" shall mean any Indenture Supplement, substantially in the form of Exhibit B to the Indenture, between the Debtor and the Indenture Trustee, covering the Equipment and the Assigned Leases.

"Indenture Trustee" shall mean Continental Bank, National Association, and its successors in trust as Indenture Trustee under the Indenture.

"Interchange Rules" shall have the meaning specified in Section 3.7 of the Indenture.

"Intercompany Transactions" shall have the meaning specified in the CIT Supplemental Commitment Letter.

"Late Rate" shall mean the higher of interest at the annual rate equal to (i) the Coupon Rate plus 2% or (ii) the Prime Rate plus 2% (or the highest rate permitted by applicable law, whichever is less).

"Lien" shall mean any mortgage, pledge, security interest, lien, encumbrance, disposition of title or other charge of any kind on property.

"Noteholder" shall mean the holder of any Secured Note issued, registered and outstanding under the Indenture, and its respective successors and assigns.

"Loan Value" shall have the meaning specified in Section 5 of the Indenture.

"Make-Whole Amount" shall mean, in connection with any prepayment of the Secured Notes pursuant to Section 6.4 of the Indenture, the excess, if any, of (i) the aggregate present value as of the date of such prepayment of each dollar of principal being prepaid and the amount of interest that would have been payable in respect of such dollar if such prepayment had not been made, determined by discounting such amounts at the Reinvestment Rate from the respective dates on which they would have been payable, over (ii) 100% of the principal amount of the outstanding Secured Notes being prepaid. If the Reinvestment Rate is equal to or higher than the Coupon Rate, the Make-Whole Amount shall be zero.

"Mandatory Fixed Rate" shall mean the average of the seven year and ten year U.S. Treasury Bond yield to maturity plus 2.35% as set forth five (5) days prior to the Mandatory Reset Date.

"Mandatory Reset Date" shall have the meaning specified in Section 1.4 of the Note Purchase Agreement.

"Medium Term Notes" shall mean the Notes issued pursuant to that certain indenture dated as May 1, 1987 between Signal Capital Holdings Corporation and Manufacturers Hanover Trust Company, as trustee, as it has been amended or supplemented prior to the date hereof and as it may be further amended or supplemented.

"Modifications" shall have the meaning specified in Section 3.9 of the Indenture.

"New Secured Notes" shall have the meaning specified in Section 2.5 of the Indenture.

"Noteholder" shall mean each and every holder of a Secured Note.

"Note Purchase Agreement" shall mean the Note Purchase Agreement dated as of December 14, 1989 between the Borrower and the Note Purchaser.

"Note Purchaser" shall mean The CIT Group/Equipment Financing, Inc. and its successors and assigns, including each and every Noteholder.

"Officer's Certificate" shall mean a certificate signed (i) in the case of a corporation by the President, any Vice President, the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary of such corporation, (ii) in the case of a partnership by the Chairman of the Board, the President or any Vice President, the Treasurer or an Assistant Treasurer of a corporate general partner, and (iii) in the case of a commercial bank or trust company, the Chairman or Vice Chairman of the Executive Committee or the Treasurer, any Trust Officer, any Vice President, any Executive or Senior or Second or Assistant Vice President, or any other officer or assistant officer customarily performing the functions similar to those performed by the persons who at the time shall be such officers, or to whom any corporate trust matter is referred because of his knowledge of and familiarity with the particular subject.

"Old Secured Notes" shall have the meaning specified in Section 2.5 of the Indenture.

"Old Rail" shall have the meaning specified in Section 3.1 of the Note Purchase Agreement.

"Operative Agreements" shall mean the Note Purchase Agreement, the Secured Notes outstanding at the time of reference, the Indenture and the Indenture Supplement.

"Optional Fixed Rate" shall mean the average of the seven year and ten year U.S. Treasury Bond yield to maturity plus 2.35% as set forth five (5) days prior to the applicable Optional Reset Date.

"Optional Reset Date" shall have the meaning specified in Section 1.4 of the Note Purchase Agreement.

"Other Assigned Agreements" shall have the meaning specified in Section 1.3 of the Indenture.

"Parts" means all appliances, parts, instruments, appurtenances, accessories, furnishings, linings and other equipment of whatever nature which may from time to time be incorporated or installed in or attached to the Equipment.

"Permitted Bank" shall have the meaning specified in clause (iii) of the definition of the term "Permitted Investments."

"Permitted Investments" shall mean (i) marketable direct obligations issued or unconditionally guaranteed by the United States of America or any agency thereof and maturing within one year from the date of acquisition thereof, (ii) commercial paper maturing no more than 270 days from the date of creation and having at the time such Investment is made a rating of at least A-1 from Standard & Poor's Corporation or at least P-1 from Moody's Investors Service, Inc., (iii) certificates of deposit of any banking institution existing under the laws of the United States of America or any state thereof having capital, surplus and undivided profits (or the equivalent) of at least US\$100,000,000 and having at the time such Investment is made, a long term deposit rating of at least A from Standard & Poor's Corporation or its equivalent from Moody's Investors Service, Inc. (such banking institution being hereinafter referred to as a "Permitted Bank"), (iv) money market preferred stock having, at the time such Investment is made, a rating of at least AA from Standard & Poor's Corporation or its equivalent from Moody's Investors Service, Inc., (v) repurchase obligations of Permitted Banks, (vi) Investments in any Subsidiary of the Lessee, (vii) certificates of deposit of non-Permitted Banks existing under the laws of the United States of America or any state thereof in an amount not to exceed either US\$10,000,000 in the aggregate or US\$1,000,000 with

any one such institution, or (viii) certificates of deposit of any banking institution existing under the laws of Canada or any province thereof having capital, surplus and undivided profits (or the equivalent) of at least C\$1,000,000,000 or having capital, surplus and undivided profits (or the equivalent) of at least C\$250,000,000 and having at the time such investment is made, a long-term deposit rating of at least Aa2 from Moody's Investors Service, Inc., not to exceed C\$10,000,000 in the aggregate with respect to all certificates of deposit under this clause (viii).

"Permitted Liens" with respect to the Equipment and each Unit thereof, shall mean: (i) the interests of any lessee under an Assigned Lease and any sublessee under a sublease of an Assigned Lease; (ii) any Liens thereon for taxes, assessments, levies, fees and other governmental and similar charges not due and payable or the amount or validity of which is being contested so long as there exists no material danger of sale, forfeiture, loss or loss of use of such Equipment or Unit; (iii) any Liens of mechanics, suppliers, materialmen, laborers, employees, repairmen and other like Liens arising in the ordinary course of business securing obligations which are not due and payable or the amount or validity of which is being contested so long as there exists no material danger of sale, forfeiture, loss or loss of use of such Equipment or Unit; (iv) the Lien and security interest granted to the Indenture Trustee under and pursuant to the Indenture, and the respective rights of the Noteholders and the Indenture Trustee under the Operative Agreements; (v) Liens arising out of any judgment or award against the Debtor (or any lessee under an Assigned Lease and any sublessee under a sublease of an Assigned Lease) with respect to which an appeal or proceeding for review is being presented in good faith and with respect to which there shall have been secured a stay of execution pending such appeal or proceeding for review; and (vi) any other Lien with respect to which the Debtor (or any lessee under an Assigned Lease and any sublessee under a sublease of an Assigned Lease) shall have provided a bond adequate in the reasonable opinion of the Indenture Trustee.

"Person" shall mean an individual, partnership, corporation, trust, association or unincorporated organization, and a government or agency or political subdivision thereof.

"Prime Rate" shall mean the rate announced from time to time by The Chase Manhattan Bank, N.A. as its prime commercial lending rate.

"Pro Forma Financials" shall mean at any date, the unaudited pro forma financial statements of the Debtor as of the preceding month end which reflect the completed funding of the transactions contemplated by the Note Purchase Agreement, the Bank

Financing and the effect of the anticipated Securitized Financing and Intercompany Transactions.

"Pullman" shall have the meaning specified in Section 3.1(e) of the Note Purchase Agreement.

"Recap Officer's Certificate" shall mean a certificate from a Vice President or more senior officer of the Debtor substantially in the form of Exhibit B to the Note Purchase Agreement.

"Register" shall have the meaning specified Section 2.3 of the Indenture.

"Reinvestment Rate" shall mean 75 basis points plus the arithmetic mean of the yields under the respective headings "This Week" and "Last Week" published in the Statistical Release under the caption "Treasury Constant Maturities" for the maturity (rounded to the nearest month) corresponding to the Weighted Average Life to Maturity of the principal of the Secured Notes being prepaid. If no maturity exactly corresponds to such Weighted Average Life to Maturity, yields for the two published maturities most closely corresponding to such Weighted Average Life to Maturity shall be calculated pursuant to the immediately preceding sentence and the Reinvestment Rate shall be interpolated or extrapolated for such yields on a straight-line basis, rounding in each of such relevant periods to the nearest month. For the purposes of calculating the Reinvestment Rate, the most recent Statistical Release published prior to the date of payment hereunder shall be used.

"Reset Notice" shall have the meaning specified in Section 1.4 of the Note Purchase Agreement.

"Reset Offer" shall have the meaning specified in Section 1.4 of the Note Purchase Agreement.

"Secured Indebtedness" shall mean the outstanding Secured Notes and all principal thereof (and the Make-Whole Amount, if any) and interest thereon and all additional amounts and other sums at any time due and owing from or required to be paid by the Debtor under the terms of the outstanding Secured Notes or the Indenture.

"Secured Notes" shall mean the Secured Notes due on June 26, 2001 of the Debtor, bearing interest at the Coupon Rate, substantially in the form of Exhibit A to the Indenture.

"Securitized Financing" shall have the meaning specified in the CIT Supplemental Commitment Letter.

"Security" shall have the same meaning as in Section 2(1) of the Securities Act of 1933, as amended.

"Senior Debt" of the Debtor and its consolidated Subsidiaries means indebtedness incurred by the Debtor and its consolidated Subsidiaries of any term of maturity incurred in respect of (i) money borrowed or raised, (ii) any bond, note, loan, stock, debenture or similar instrument, (iii) acceptance or documentary credit facilities, (iv) the deferred payment for assets or services acquired (other than payments deferred for not more than 60 days for assets or services acquired, where such deferral is granted or acquisition is made in the ordinary course of business), (v) rental payments under leases (whether in respect of land, machinery, equipment or otherwise) which are treated as capitalized leases for the purposes of generally accepted accounting principles in the United States of America as in force at the date of the Indenture and (vi) the present value (discounted at a per annum rate equal to the interest rate on the debt incurred by the lessor in connection with the acquisition of the equipment subject to such lease, or if there is no such rate or the Debtor does not know such rate, at the Prime Rate in effect at the inception of such lease) of all rentals under operating leases. Senior Debt shall not include any Unsecured Subordinated Debt.

"Statistical Release" shall mean the statistical release designated "H.15(519)" or any successor publication which is published weekly by the Federal Reserve System and which establishes yields on actively traded U.S. Government Securities adjusted to constant maturities or, if such statistical release is not published at the time of any determination hereunder, then such other reasonably comparable index which shall be designated by the holders of 66-2/3% in aggregate principal amount of the outstanding Secured Notes.

"Subsidiary" of any Person shall mean any corporation, association, or other business entity of which more than 50% (by number of votes) of the Voting Stock at the time outstanding shall at the time be owned, directly or indirectly, by such Person or by any other corporation, association or trust which is itself a Subsidiary within the meaning of this definition, or collectively by such Person and any one or more such Subsidiaries.

"Tangible Assets" means, at any date, all of the assets of the Debtor and its consolidated Subsidiaries as determined in accordance with generally accepted accounting principles then in effect consistently applied except: (a) patents, copyrights, trademarks, trade names, franchises, goodwill, and other intangibles; (b) unamortized debt discount and expense; (c) fixed assets to the extent of any write-up in the book value thereof

resulting from a revaluation effective after the Closing Date; and  
(d) Investments which are not Permitted Investments.

"Tangible Net Worth" means, at any date: (a) the book value (net of depreciation, obsolescence, amortization, valuation, and other proper reserves as determined in accordance with generally accepted accounting principles consistently applied) at which Tangible Assets would be shown on a consolidated balance sheet of the Debtor and its Subsidiaries at such date prepared in accordance with generally accepted accounting principles then in effect consistently applied; less (b) the amount at which the liabilities of the Debtor and its Subsidiaries would be shown on such consolidated balance sheet.

"Total Equipment Cost" shall mean the sum of the Equipment Cost for each Unit then subject to the Lien of the Indenture.

"Trustee" shall mean the the Indenture Trustee.

"Unblended Leases" shall have the meaning specified in Section 1.2(a) of the Indenture.

"Unit" shall mean each unit or item of Equipment.

"Unsecured Subordinated Debt" means any unsecured indebtedness which would be Senior Debt but for the fact that it is junior and subordinated in right of payment or otherwise to any Senior Debt of the Debtor or its consolidated Subsidiaries.

"Voting Stock" shall mean Securities of any class or classes of a corporation, the holders of which are ordinarily, in the absence of contingencies, entitled to elect a majority of the board of directors (or persons performing similar functions).

"Weighted Average Life to Maturity" of the principal amount of the Secured Notes being prepaid shall mean, as of the time of any determination thereof, the number of years obtained by dividing the then Remaining Dollar-Years of such principal by the aggregate amount of such principal. The term "Remaining Dollar-Years" of such principal shall mean the amount obtained by (i) multiplying (1) the remainder of (A) the amount of principal that would have become due on each scheduled payment date if such prepayment had not been made, less (B) the amount of principal on the Secured Notes scheduled to become due on such date after giving effect to such prepayment and the application thereof, by (2) the number of years (calculated to the nearest one-twelfth) which will elapse between the date of determination and such scheduled payment date, and (ii) totalling the products obtained in (i).